

# **Exhibit B**

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TENNESSEE  
3 KNOXVILLE DIVISION  
4 No. 3:16-cv-00121

5 -----X  
6 LEWIS COSBY and KENNETH R. MARTIN as  
7 beneficiary of the Kenneth Ray Martin Roth  
8 IRA, on behalf of themselves and all  
9 others similarly situated,  
10 Plaintiffs,  
11 - against -  
12 KPMG, LLP and SCOTT M. BORUFF,  
13 Defendants.  
14 -----X

15 June 4, 2019  
16 8:06 a.m.

17 VIDEOTAPED DEPOSITION of DR. MUKARRAM  
18 ATTARI, held at the offices of COHEN  
19 MILSTEIN SELLERS & TOLL, PLLC, located at  
20 88 Pine Street, 14th Floor, New York, New  
21 York 10005, before Anthony Giarro, a  
22 Registered Professional Reporter, a  
23 Certified Realtime Reporter and a Notary  
24 Public of the State of New York.  
25

1       A P P E A R A N C E S :

2  
3       COHEN MILSTEIN SELLERS & TOLL, PLLC  
4       Attorneys for Plaintiffs  
5       88 Pine Street, 14th Floor  
6       New York, New York 10005

7  
8       BY:   LAURA POSNER, ESQ.  
9            RICHARD BURNER, Paralegal

10       McDERMOTT WILL & EMERGY  
11       Attorneys for Defendant KPMG, LLP  
12       340 Madison Avenue  
13       New York, New York 10173

14       BY:   GREGORY G. BALLARD, ESQ.

15       WALLER LANSDEN DORTCH & DAVIS, LLP  
16       Attorneys for Defendant KPMG, LLP  
17       511 Union Street, Suite 2700  
18       Nashville, Tennessee 37219

19       BY:   PAUL DAVIDSON, ESQ.

20  
21  
22       ALSO PRESENT:  
23            Jonathan Popham, Videographer  
24  
25

1           THE VIDEOGRAPHER: Good  
2 morning. We are going on the record  
3 at 8:06 a.m. on June 4th, 2019.  
4 Please note that the microphones are  
5 sensitive and may pick up whispering,  
6 private conversations and cellular  
7 interference. Please turn off all  
8 cell phones or place them away from  
9 the microphones as they can interfere  
10 with the deposition audio. Audio and  
11 video recording will continue until  
12 all parties agree to go off the  
13 record.

14           This is Media No. 1 in the  
15 video deposition of Mukarram Attari,  
16 taken by counsel for plaintiffs, in  
17 the matter of Lewis Cosby and Kenneth  
18 R. Martin versus KPMG, LLC and Scott  
19 B. Boruff, filed in the United States  
20 District Court for the Eastern  
21 District of Tennessee, Knoxville  
22 Division, Case No. 3:16-cv-00121.  
23 This deposition is being held at  
24 Cohen Milstein, located at 88 Pine  
25 Street, New York, New York.



1                   My name is Jonathan Popham  
2                   from Veritext. And I'm the  
3                   videographer. The court reporter is  
4                   Anthony Giarro, also from Veritext.

5                   I'm not authorized to  
6                   administer an oath. I'm not related  
7                   to any party in this action, nor am I  
8                   financially interested in the  
9                   outcome.

10                  Will counsel and all present  
11                  please now state their appearances  
12                  and affiliations for the record.

13                  MS. POSNER: Good morning.  
14                  Laura Posner from Cohen Milstein  
15                  Sellers & Toll. And together with me  
16                  is Rich Burner, who's a paralegal in  
17                  my office.

18                  MR. BALLARD: I'm Greg  
19                  Ballard from McDermott Will & Emery  
20                  for KPMG, LLP.

21                  MR. DAVIDSON: Paul Davidson  
22                  from Waller Lansden Dortch & Davis  
23                  for KPMG.

24                  THE VIDEOGRAPHER: Will the  
25                  court reporter please swear in the

1 witness.

2 D R. M U K A R R A M A T T A R I,  
3 after having first been duly sworn by a  
4 Notary Public of the State of New York, was  
5 examined and testified as follows:

6 EXAMINATION BY

7 MS. POSNER:

8 Q Good morning, Dr. Attari.  
9 How are you?

10 A Good.

11 MS. POSNER: Just a bit of  
12 housekeeping, the caption read by the  
13 videographer included Defendant  
14 Boruff who was dismissed from the  
15 action. So I just want to make sure  
16 that that's clear on the record.

17 Q Thank you for being here  
18 today. I appreciate it.

19 You've been deposed before;  
20 right?

21 A Yes.

22 Q So you understand how this  
23 works. I'm going to ask you questions,  
24 you have to wait for me to finish my  
25 question, and then you'll have to respond

1 orally, so that the court reporter can  
2 get down your answers.

3 A Yes.

4 Q If you have any questions  
5 about the questions I'm asking, you don't  
6 understand what I'm asking, you'll be  
7 sure to let me know?

8 A I will.

9 Q And if you don't ask me any  
10 questions, I'm going to assume you  
11 understand my question; is that okay?

12 A That's fine.

13 Q And if you ever need to take  
14 any breaks, please let me know. I just  
15 ask that you respond to the pending  
16 question before we take that break. Is  
17 that okay?

18 A Yeah. That sounds fine.

19 Q We're going to mark as  
20 Exhibit 58, your report in this matter.

21 (The above-referred-to  
22 document was marked as Exhibit 58 for  
23 identification, as of this date.)

24 Q Do you recognize this  
25 document?

1           A           I do.

2           Q           And did you sign this report  
3 on May 13th, 2019?

4           A           Yes, I did.

5           Q           And did you prepare this  
6 report?

7           A           I prepared it with  
8 assistance from my team.

9           Q           And how many members are on  
10 your team?

11          A           There were two or three  
12 people who primarily worked on it. But  
13 there were a larger number over the  
14 course of the report.

15          Q           Can you tell me the names of  
16 the individuals from your team that  
17 worked on the report?

18          A           The primary people were  
19 Assen Koev and Ana Balcarcel.

20          Q           And did Mr. Koev or  
21 Ms. Balcarcel ever submit an expert  
22 report in public that you're aware of?

23          A           No. I'm not aware of any  
24 that they have submitted.

25          Q           Let's turn to page 2 of your

1 report and specifically paragraph 6.

2 Is this a complete list of  
3 the questions that you were asked by  
4 counsel for KPMG to address in your  
5 report?

6 A Yes.

7 Q There are no questions  
8 outside of what's provided in  
9 paragraph 6; correct?

10 A Correct. I mean I was asked  
11 the overarching question and to review  
12 and opine on the reports submitted by  
13 Chad Coffman. And then I was asked  
14 specific questions.

15 Q And then if you continue  
16 down on that page, starting on  
17 paragraph 8 and continuing through 16 on  
18 page 5, is that a complete summary of  
19 your opinions as you hold them today in  
20 this matter?

21 A It's a summary of my  
22 opinions. The detailed opinions are in  
23 the remainder of the report. So, yes,  
24 this is a summary of the opinions.

25 Q And does this report in full

1 contain a complete and accurate statement  
2 of your opinions as you hold them today  
3 in this matter?

4 A Yes, it does.

5 Q And does it contain the  
6 bases and reasons for those opinions?

7 A Yes, it does.

8 Q And did you include in this  
9 report the facts and data you considered  
10 in formulating these opinions?

11 A Yes. In addition, there was  
12 some backup material that was provided to  
13 you.

14 Q And does this report contain  
15 all the exhibits that you'll use to  
16 support your opinion in this matter?

17 A Yes, it does, again with the  
18 backup. So I'm assuming you're using the  
19 term report to encompass this and the  
20 backups, correct.

21 Q And did you do your best to  
22 comply with the federal rules requirement  
23 that this report contain a complete  
24 statement of all opinions you will  
25 express and the bases or reasons for

1       them?

2               A               Yes, I did.

3               Q               Is there a reason you did  
4       not declare under penalty of perjury  
5       under the laws of the United States that  
6       your report is true and correct when you  
7       signed it?

8               A               Sorry. I don't understand  
9       that question.

10              Q              Do you know what it means to  
11       declare something under penalty of  
12       perjury?

13              A              I have seen that, yes. But  
14       I don't know that I've seen that very  
15       often in expert reports.

16              Q              So you didn't understand  
17       whether you had a requirement to do that?

18              A              Yes. I didn't.

19              Q              Do you have any reason to  
20       believe that anything contained in your  
21       report is inaccurate?

22              A              No, I don't.

23              Q              What did you do before you  
24       signed your report to ensure that the  
25       report and the exhibits thereto were true

1 and correct?

2 A I worked on the report. I  
3 reviewed it at various stages as, you  
4 know -- I was making at it, other people  
5 were making at it and, you know, I kind  
6 of made sure I understood the analysis  
7 that was being done. And it was being  
8 done under my supervision and to the --  
9 to the specifications that I was  
10 providing.

11 Q Did you review all of the  
12 documents cited as support for your  
13 opinions in your report?

14 A Yes. I mean some of the  
15 academic literature, I may not have  
16 cited -- I may not have read completely.  
17 Some of the other documents, I may not  
18 have read completely.

19 Q Have you or anyone on your  
20 behalf been asked to calculate damages in  
21 this matter?

22 A At some point, we were asked  
23 to do a preliminary damage calculation.

24 Q Do you recall what the  
25 damage calculation was?



1 MR. BALLARD: We're going to  
2 ask you not to answer that question.  
3 That would be protected.

4 Q You're not providing an  
5 opinion here today with regard to the  
6 damages at issue in this case; correct?

7 A No.

8 Q If you turn to, I believe  
9 it's Appendix 1 of your report, which is  
10 right after your signature, does Appendix  
11 1 contain all of your relevant  
12 qualifications in this matter?

13 A Appendix 1 is my CV. So it  
14 contains, yes, all of my relevant -- all  
15 of the relevant information about me.

16 Q And there's a list of  
17 publications provided on the bottom of  
18 page 1, running over to page 2.

19 Is that a complete list of  
20 all the publications you've published --  
21 actually, this is longer than the past  
22 ten years but in the past ten years?

23 A Yes.

24 Q And then --

25 A Some of these are not

1 publications. They're working papers.  
2 But they're probably out there somewhere.  
3 So the first four -- five are  
4 publications. They're SR working papers.

5 Q Are they papers you're  
6 currently working on or are there old  
7 working papers?

8 A No. They're old working  
9 papers.

10 Q Were they published  
11 anywhere?

12 A They're available publicly.  
13 But they weren't published in a journal.

14 Q Now, if you turn to page 3  
15 of this document, it talks about your  
16 expert assignments. Do you see that?

17 A Yes.

18 Q Is that a complete list of  
19 all of the matters in which you've  
20 submitted expert reports?

21 A Yes.

22 Q The first matter, the Ambac  
23 v. EMC Mortgage Corporation matter, is  
24 that related to the Syncora-EMC  
25 Corporation matter?

1           A           I don't know what you mean  
2   by related.

3           Q           Are the cases related?

4           A           Not that I know of.

5           Q           Do they involve the same set  
6   of facts?

7           A           They involve similar facts  
8   but not the same.

9           Q           And of these five matters,  
10   only one of them is a securities fraud  
11   class action; correct?

12          A           Correct.

13          Q           And that's the Dalton Petrie  
14   case?

15          A           That's correct.

16          Q           That's actually two related  
17   matters; is that correct?

18          A           Yeah. They're two case  
19   numbers. I don't know how they were  
20   related and such.

21          Q           And in that matter, I'm  
22   going to refer to that as ECG; is that  
23   okay?

24          A           That's fine.

25          Q           Sorry. EGC.

1                   In the EGC matter, who were  
2                   you hired by?

3                   A           One of the defendants. I  
4                   don't know which one.

5                   Q           Was it the --

6                   A           One or more of the  
7                   defendants. I don't know.

8                   Q           Were one or more of those  
9                   defendants a number of accountants?

10                  A           No. There were -- I believe  
11                  they were officers and directors. But I  
12                  don't recall sitting here.

13                  Q           Now, in that case, EGC  
14                  traded on the OTC bulletin board;  
15                  correct?

16                  A           Correct.

17                  Q           And you opined that the  
18                  market for EGC was not efficient;  
19                  correct?

20                  A           Correct.

21                  Q           And the court disagreed with  
22                  you; correct?

23                  A           Correct.

24                  Q           Are you, outside of these  
25                  five matters, currently working on any

1 securities fraud class actions?

2 A As an expert?

3 Q Yes.

4 A No.

5 Q And then if you could turn  
6 back to page 1 of your report, in  
7 paragraph 4, you talk about your clients  
8 and various matters. And you list  
9 institutional and individual investors.  
10 Do you see that?

11 A Yes.

12 Q In what context have you  
13 represented institutional or individual  
14 investors?

15 A As a consultant in -- as a  
16 consultant in various kinds of  
17 damage-related matters.

18 Q In any of those matters, did  
19 you submit a report to a court?

20 A No.

21 Q And were any of those  
22 matters securities fraud class actions?

23 A No.

24 Q If you turn to page 5 of  
25 your report, paragraph 17, you indicate

1     that you're being compensated at an  
2     hourly rate of \$990 for your work in this  
3     matter. Is that still correct?

4             A             CRA is being compensated at  
5     that rate.

6             Q             Fair enough.  
7                             Is that your current  
8     standard rate?

9             A             Yes.

10            Q            And we mentioned that -- you  
11     mentioned that you had at least two  
12     members of your team working on this  
13     matter.

14                          Are they also charging  
15     \$990 per hour?

16            A            I don't think they are  
17     charging anything. CRA is charging their  
18     standard rate. And I don't know their  
19     rate, sitting here. It's not 990.

20            Q            Do you know, ballpark, what  
21     it might be?

22            A            It would be between 5 and  
23     800 or so.

24            Q            Do you know how many hours  
25     your team has spent on this matter?

1           A           No.

2           Q           Do you know if it's more  
3   than 100?

4           A           I've spent more than 100.  
5   So, yes, the team would have spent more  
6   than 100.

7           Q           Have you spent more than 200  
8   hours?

9           A           No.  It's between 100 and  
10  200.

11          Q           Is it fair to say that your  
12  team, including you, has spent over 500  
13  hours on this matter?

14          A           Very likely.

15          Q           Is it fair that you've spent  
16  over 750 hours as a team on this matter?

17          A           Very -- I mean less likely  
18  than 500 but quite likely.

19          Q           So it's likely between 500  
20  and 750 hours?

21          A           It's probably more than --  
22  if I had to estimate it, sitting here, it  
23  would probably be something around 1,000.  
24  But, you know, it could be over, it could  
25  be under.

1           Q           Do you know how much CRA has  
2 billed KPMG in this matter?

3           A           No, I don't.

4           Q           And do you bill your time --  
5 I should say, does CRA bill your time or  
6 your team's time by the hour?

7           A           Yes.

8           Q           CRA is a public company;  
9 correct?

10          A           Correct.

11          Q           And it files Forms 10-K with  
12 the SEC; correct?

13          A           Correct.

14          Q           And you read those form  
15 10-Ks; correct?

16          A           Yes. I have read some of  
17 them.

18          Q           Is anyone from KPMG a  
19 shareholder in Charles River?

20          A           I don't know how I would  
21 know.

22          Q           Do you know if anyone from  
23 Sidley Austin is a shareholder in CRA?

24          A           I don't know.

25          Q           Do you know if anyone from



1 McDermitt Will & Emery is a shareholder in  
2 CRA?

3 A I don't know.

4 Q Do you know if anyone from  
5 Waller Lansden Dortch & Davis is a  
6 shareholder in CRA?

7 A I don't know.

8 Q Charles River uses an  
9 outside auditor; correct?

10 A Correct.

11 Q Do you know who the current  
12 outside auditor is?

13 A I do not.

14 Q And was KPMG ever Charles  
15 River's outside auditor?

16 A I do not know.

17 (The above-referred-to  
18 document was marked as Exhibit 59 for  
19 identification, as of this date.)

20 Q We've handed you what's been  
21 marked as Exhibit 59.

22 Do you recognize this  
23 document?

24 A I haven't seen this before.

25 Q And this is a Form 10-K

1 filed with the SEC by CRA International;  
2 correct?

3 A That's what it says.

4 Q And it was filed on  
5 June 6th, 2014?

6 A Yes. That's what it says is  
7 the date of the report.

8 Q If you can turn to page 2 of  
9 this document, if you review that, does  
10 that refresh your recollection that KPMG  
11 previously served as CRA's auditor?

12 A Where are you reading?  
13 Sorry.

14 Q I guess it's a carryover  
15 page.

16 On the bottom of page 1, it  
17 talks about, "On this date, we dismissed  
18 KPMG, LLP as our registered public  
19 accountants effective immediately."

20 And it goes on page 2,  
21 discussing the most recent audit opinions  
22 from KPMG.

23 A So, yeah, this document says  
24 that KPMG had served as CRA's auditor at  
25 some point.

1           Q           Until June 6th of 2014;  
2 correct?

3           A           That's what it seems to say,  
4 yes.

5           Q           Do you know why KPMG was  
6 dismissed as Charles River's auditor?

7           A           I do not.

8           Q           And if you turn to page 2 of  
9 this document in the first-full  
10 paragraph -- sorry. Excuse me.

11                   The second-full paragraph,  
12 it talks about KPMG's audit opinions. Do  
13 you see that?

14           A           Yes.

15           Q           And for Charles River's  
16 fiscal year ending December 28, 2013 and  
17 fiscal year ending March 29th, 2014, what  
18 did KPMG find with regard to Charles  
19 River's internal controls?

20                   MR. BALLARD: Objection to  
21 form.

22           A           It doesn't have 2014.

23           Q           Sorry.

24                   If you look up on the  
25 first-full paragraph, it says, "Except

1 for the material weakness and our  
2 internal control over financial reporting  
3 as of our fiscal year ended December 28,  
4 2013 and our fiscal quarter ended  
5 March 29th, 2014." Do you see that?

6 A Yes.

7 Q I just want to make sure I  
8 get the dates right.

9 If you then go down to the  
10 following paragraph, it talks about  
11 "Except that KPMG's report indicates that  
12 we did not obtain effective control over  
13 financial reporting as of December 28,  
14 2013 because of the effect of the  
15 aforementioned material weakness." You  
16 see that?

17 A Yes.

18 Q So did KPMG find that  
19 Charles River had inadequate internal  
20 controls as of December 28, 2013?

21 A I mean that's how this  
22 sentence can be read. But I have no  
23 independent knowledge of that.

24 Q You can turn that down.

25 I'm going to turn to the

1 Cammer and Krogman factors. One of the  
2 factors you don't address in your report,  
3 if I understand correctly, in your  
4 report, you don't dispute that the  
5 average weekly trading volume for Miller  
6 Energy's common stock exceeded the  
7 standard under Cammer; correct?

8 A Correct.

9 Q And you also don't dispute  
10 that the average weekly trading volume  
11 for Miller Energy's Series C and Series D  
12 also exceeded the standard under Cammer;  
13 is that correct?

14 A Correct.

15 Q Turn to page 57 of your  
16 report. I'm going to direct your  
17 attention to paragraphs 169 through 173  
18 on page 59.

19 A The okay.

20 Q In your report, you don't  
21 dispute that the analyst coverage of  
22 Miller Energy's common stock meets the  
23 standard under Cammer; correct?

24 MR. BALLARD: Objection to  
25 form.

1           A           I don't know if there is a  
2           specific number of analysts that Cammer  
3           specifies, sitting here. But Mr. Coffman  
4           lists a number of different analysts.  
5           And I don't dispute that there were a  
6           number of analysts covering Cammer's  
7           common stock.

8           Q           You also don't dispute that  
9           it meets the Cammer's standard; correct?

10                   MR. BALLARD: Objection.

11           A           Like I said, I don't know  
12           that Cammer has a bright line that says,  
13           you know, if you're over ten, you're  
14           good. And if you're under ten, you're  
15           not, at least I don't recall there being  
16           something like that.

17           Q           I understand that there's no  
18           specific number.

19                   My question is whether you  
20           are disputing whether there was  
21           sufficient analyst coverage of the common  
22           stock, such that it meets the standard  
23           under Cammer.

24           A           And what I'm trying to say  
25           is that I don't know that there is a

1 particular level. So, you know,  
2 Mr. Coffman has said there were --  
3 whatever -- 10 or 15 analysts covering  
4 it. A number of those were actual  
5 analysts. The others were automated  
6 reports. And I'm not disputing it in  
7 this report, yes.

8 Q What is Cammer Factor 2?

9 A I don't know the sequence.

10 Q The Cammer factor dealing  
11 with analyst reports, what, in your  
12 opinion, is the purpose of that Cammer  
13 factor?

14 A That there were people who  
15 were doing analysis of the firm's  
16 financials, you know, valuing the  
17 securities, providing investors with  
18 recommendations on whether to buy or sell  
19 the securities or to hold them, what they  
20 thought the value of the securities would  
21 be in the future, you know, and to  
22 provide other information that investors  
23 might be able to use, such as  
24 projections, to form their own opinions  
25 about investment in the securities. So

1 analysts as in to analyze.

2 Q So does analyst coverage  
3 indicate that there's interest in the  
4 company and its securities?

5 A If there was no interest in  
6 the company and its securities, it's  
7 unlikely that analysts would be writing  
8 reports.

9 On the other hand, it's more  
10 than just interest. It's providing  
11 investors an ability to evaluate an  
12 investment in the securities.

13 Q Does analyst coverage  
14 indicate that information about a company  
15 is widely distributed?

16 A Analyst coverage indicates  
17 that analysis of, you know,  
18 valuation-related information about the  
19 company's securities is available to  
20 investors. Most of these analyst reports  
21 are not public documents. You can Google  
22 and find analyst reports, typically.

23 Q Depends on the analyst;  
24 correct?

25 A Yes.



1           Q           Do press reports also  
2 indicate that there is interest in a  
3 company and its securities?

4           A           Press reports indicate that  
5 there was some event that the providers  
6 of news found interesting enough to  
7 report on.

8           Q           And generally, press reports  
9 are pretty widely distributed; correct?

10          A           Again, I mean it depends on  
11 the publication. Some are  
12 subscription-only; some are freely  
13 available.

14          Q           Do SEC filings also provide  
15 information about a company and its  
16 securities?

17          A           The SEC filings also provide  
18 information about a company and its  
19 securities.

20          Q           And generally speaking, SEC  
21 filings are available publicly through  
22 the Edgar Web site?

23          A           Generally available, yes.

24          Q           Are earnings call  
25 transcripts also a means for investors to

1 find out information about a company and  
2 its securities?

3 A Yes, they are.

4 Q And generally, are earning  
5 call transcripts widely distributed and  
6 available?

7 A Yes. I believe so.

8 Q Was the value of Miller  
9 Energy's Series C and Series D preferred  
10 stock related to the value of Miller  
11 Energy's common stock?

12 A Not directly, no.

13 Q In no way, were they  
14 related?

15 A They were related but not --  
16 you know, it wasn't that if the common  
17 was X, then the preferred would be 2X or  
18 half X. It wasn't a direct and stable  
19 relationship over time.

20 Q But they were related?

21 A Yes. If the common went up,  
22 you would expect the preferred to go up.

23 Q How were they related?

24 A I'm not sure I understand  
25 that question.

1           Q           Were there specific  
2 attributes of the preferred securities  
3 that were related to the common stock?

4           A           Not directly. There were --  
5 there were securities issued by Miller.  
6 But there was a sequencing in which  
7 payments would be made. The preferred  
8 had a right to an ongoing dividend while  
9 the common stockholders would only be  
10 paid a dividend, you know, if there was  
11 money available.

12          Q           And you agree with me that  
13 the preferred stock was higher in the  
14 capital structure than the Miller's  
15 common stock?

16          A           It was more senior in the  
17 capital structure than Miller's common  
18 stock, yes.

19          Q           And would you agree with me  
20 that the value of the preferred stock was  
21 economically related to the value of the  
22 common stock?

23          A           Yes and no. If the common  
24 stock went down to zero, it was likely  
25 that the preferred would also have a low

1 or no value.

2 On the other hand, if the  
3 common went up to a very high number, it  
4 was not clear that the preferred would  
5 kind of track it and go up to as a higher  
6 number; you know, the Series C did have a  
7 conversion feature that might cause it to  
8 track a little bit better. But the  
9 Series D had no conversion feature.

10 Q If you turn to page 59 of  
11 your report, paragraph 173, the bottom of  
12 that paragraph, you say, "Equity analyst  
13 reports analyze revenue, projections,  
14 earning projections, profitability and  
15 share price targets. These are relevant  
16 to the equity component of the preferred  
17 security but insufficient for the  
18 analysis of the debt component." You see  
19 that?

20 A Yes.

21 Q So you agree that the  
22 analyst reports, revenue projections,  
23 earning projections, profitability and  
24 share price targets were relevant to  
25 preferred security holders?

1           A           The share price targets have  
2     to do with the common. So they would not  
3     be relevant to the preferred stockholders  
4     directly. The rest of it would have some  
5     relevance, yes.

6           Q           When you say "the share  
7     price targets wouldn't be directly  
8     relevant," would they be indirectly  
9     relevant?

10          A           Yes. If analysts explained  
11     that they believed that the common stock  
12     would be worth a lot more or they  
13     expected that the common stock would be  
14     worth a lot more in the future, that  
15     would be a positive sign, signal to  
16     preferred shareholders.

17          Q           And Miller Energy's equity  
18     analysts did analyze Miller's revenue  
19     projections, earnings projections,  
20     profitability and gave share price  
21     targets occasionally; correct?

22          A           Some of them did. I think a  
23     fraction of the total list that  
24     Mr. Coffman has.

25          Q           Did Miller's -- did the

1 analysts following Miller Energy also  
2 discuss Miller Energy's debt?

3 A In valuing the common stock,  
4 they discussed that, yes.

5 Q Did the analysts covering  
6 Miller Energy also discuss Miller  
7 Energy's liquidity?

8 A Again, in valuing the common  
9 stock, yes.

10 Q And did the analysts  
11 following Miller Energy securities  
12 specifically discuss the preferred  
13 securities?

14 A They discussed, I believe,  
15 the issuance of the preferred securities,  
16 you know, payments that were due on the  
17 preferred securities. They did not  
18 discuss the preferred in terms of valuing  
19 the preferred specifically.

20 Q Did the analysts covering  
21 Miller Energy also discuss the payment of  
22 dividends to the preferred shareholders?

23 A Yes. The fact that  
24 dividends had to be paid. And so that  
25 would affect what was left over for the

1 common stockholders.

2 Q Did they also discuss  
3 whether the dividends would be paid to  
4 the preferred shareholders?

5 A I believe they may have  
6 discussed it, the fact that the dividends  
7 had to be paid, yes.

8 Q For this Cammer factor to be  
9 satisfied, is it your position that only  
10 formal analysts reports with a price  
11 target for the security at issue were  
12 relevant?

13 A Absent that, investors do  
14 not get information about the securities.  
15 They get information about the company,  
16 so yes.

17 Q What's your basis for that  
18 opinion?

19 A The factor relates to  
20 analyst report. It doesn't relate to SEC  
21 filings or news articles and so on.

22 Q Do you have any academic  
23 literature case law to support your  
24 contention that analyst reports with  
25 price targets are the only type of

1 analyst reports that are relevant for  
2 purposes of this Cammer factor?

3 A No.

4 (The above-referred-to  
5 document was marked as Exhibits 60  
6 through 70 for identification, as of  
7 this date.)

8 Q So, Dr. Attari, I've marked  
9 Exhibits 60 through 70 which are certain  
10 analyst reports on Miller Energy.

11 Did you have a chance to  
12 look through them briefly?

13 A Just the headers, yes.

14 Q Did you read the analyst  
15 reports pertaining to Miller Energy?

16 A I read a fair number of  
17 them.

18 Q If you turn to Exhibit 60 on  
19 the first page, this is October 10, 2012  
20 analyst report by SunTrust Robinson  
21 Humphrey, there's a full paragraph that  
22 starts, "Well on the way to sizable  
23 production ramp." Do you see that?

24 A Yes.

25 Q And it talks about



1 eliminating much of the current  
2 18 percent debt and 10.75 percent  
3 preferred shares. Do you see that?

4 A Yes.

5 Q Do you think that  
6 information is relevant to preferred  
7 shareholders?

8 A In what way are you asking  
9 it's relevant?

10 Q In any way.

11 A I mean it's financial  
12 information about Miller, yes. So to the  
13 extent it's financial about Miller is  
14 relevant, yes.

15 Q It's discussing Miller  
16 Energy's debt; correct?

17 A It's discussing production  
18 as I see it.

19 Q Doesn't talk about trying to  
20 eliminate much of the current 18 percent  
21 debt?

22 A Yes.

23 Q And 10.75 percent preferred  
24 shares?

25 A Yes.

1           Q           Turn to the next exhibit,  
2   61. This is a report by Brean Capital  
3   LLC on February 8, 2013. And if you look  
4   at the second-to-last sentence, it talks  
5   about the requirement to raise an  
6   additional 15 million in preferred equity  
7   to tap the additional funds.

8           A           Yes.

9           Q           And then it talks about the  
10  impact of that for the common  
11  shareholders?

12          A           Yes. It talks about the  
13  impact for the common shareholders and  
14  the reduced earnings per share.

15          Q           Is this information  
16  something that you think would be  
17  relevant to shareholders?

18          A           I'm not sure. The sentence  
19  says that it will reduce earnings per  
20  share for the common shareholders.

21          Q           Correct. That second  
22  sentence does.

23                    But do you think the fact  
24  that they're required to raise additional  
25  15 million in preferred equity to tap

1 additional funding is important to  
2 preferred shareholders?

3 A Yeah. It's a piece of  
4 information for preferred shareholders.

5 Q You can turn that over.

6 And you can look at  
7 Exhibit 62. This is a July 17th, 2013  
8 report by SunTrust Robinson Humphrey.  
9 And if you go towards the bottom of the  
10 first page under "Strong well could quell  
11 liquidity concerns," you see that  
12 paragraph?

13 A Yes.

14 Q Do you think that's  
15 information that would be relevant to  
16 preferred shareholders?

17 A It's information about the  
18 company, yes.

19 Q It's also talking about  
20 liquidity concerns with regard to the  
21 company; correct?

22 A Yes.

23 Q And if you turn towards  
24 page 3 of this document, the very last  
25 line here, which is price target

1 analysis, they talk about cash flow  
2 valuation; correct?

3 A Correct.

4 Q And that information would  
5 be relevant to preferred shareholders; is  
6 that correct?

7 A I believe that's the  
8 valuation of the common stock. 450 is  
9 the price target that they come up with  
10 for the common stock.

11 Q Right.

12 And do you think cash flow  
13 valuation would be relevant to a  
14 preferred shareholder of the security?

15 A This is after the preferreds  
16 have been paid. So this is what's left  
17 over for the common. So I'm not sure  
18 that particular number would be terrible  
19 relevant to the preferred shareholders.

20 Q You don't think cash flow  
21 would be potentially relevant to  
22 preferred shareholders?

23 A Preferred shareholders would  
24 care about cash flow. But they would  
25 care about cash flow further up the

1 chain.

2 Q Because they're concerned  
3 about whether they'd be able to get their  
4 dividend; correct?

5 A Yes.

6 Q You can turn that over.

7 Turn to Exhibit 63 which is  
8 a September 27th, 2013 report by Imperial  
9 Capital.

10 Just on that first chart on  
11 the first page, talking about key data,  
12 do you see that chart?

13 A Yes.

14 Q They list the total  
15 preferred outstanding; correct?

16 A Yes.

17 Q 63.2 million?

18 A Yes. And that's information  
19 that will be in the 10-K or the 10-Q.

20 Q If you turn to the next  
21 page, they then have a chart about Miller  
22 Energy's capitalization. Do you see  
23 that?

24 A Yes.

25 Q And they also talk about the

1 preferred equity there as well as the  
2 total debt and preferred?

3 A Yes.

4 Q And then if you turn to  
5 page 5 of this report, it's the first two  
6 paragraphs under balance sheet.

7 A Yes.

8 Q In that first paragraph,  
9 they're talking about Miller's  
10 long-term -- among other things, Miller's  
11 long-term debt; correct?

12 A Correct.

13 Q And they also talk about the  
14 preferred Series C and the preferred  
15 Series D; correct?

16 A Correct.

17 Q And then in the following  
18 paragraph, they talk about specific  
19 attributes of the preferred Series C and  
20 the preferred Series D?

21 A Yes.

22 Q Do you think this  
23 information would be relevant to  
24 preferred shareholders?

25 A Yes. But this is all

1 duplicative of information that's in  
2 Miller's filings. So there's no analysis  
3 of valuation or related information.

4 Q If you turn to the following  
5 page, page 6, under liquidity and capex,  
6 in that second paragraph --

7 A Yes.

8 Q -- do you see they're  
9 talking about a preferred equity raise  
10 and the impact of that raise with the  
11 Apollo withdrawal?

12 A Yes.

13 Q And they talk about the  
14 ability of that money to bridge the gap  
15 between capex and cash flow?

16 A Yes.

17 Q Do you think that's  
18 information that would be relevant to  
19 preferred shareholders?

20 A Yes.

21 Q If you turn to page 14 of  
22 that same report, there's an income  
23 statement chart. Do you see that?

24 A Yes.

25 Q And they list there under

1 net income, the preferred stock dividends  
2 and accretion.

3 A Yes.

4 Q And if you turn to page 16  
5 under stockholders' equity, they also  
6 discuss the numbers for the preferred  
7 stock as well; correct?

8 A Correct.

9 Q You can turn that over and  
10 turn to Exhibit 64.

11 This is a report by Brean  
12 Capital on August 20th, 2014. Do you see  
13 that?

14 A Yes.

15 Q And in that first paragraph,  
16 the last sentence, it talks about the  
17 fact that Miller has informed the market  
18 that it's going to do another public  
19 offering of the Series D. You see that?

20 A Sorry. Where are you?

21 Q First paragraph under  
22 investment summary.

23 A Oh, yes.

24 Q And it's the last  
25 sentence -- sorry -- the second-to-last



1 sentence.

2 A Yes.

3 Q And then if you go down  
4 under key points, the second bullet  
5 point, they give more information there  
6 about the announced public offering;  
7 correct?

8 A Correct.

9 Q Go to the next one,  
10 Exhibit 65.

11 This is Brean Capital report  
12 of August 21st, 2014. And throughout  
13 this whole first page, they talk about  
14 the Series D preferred offering; correct?

15 A Can you point me to the  
16 place?

17 Q That first full paragraph,  
18 they start talking about the confirmed,  
19 they price an offering at 750,000 shares  
20 of Series D preferred stock for a price  
21 of 2450 per share, successfully raising  
22 18.4 million in gross proceeds.

23 A But that's something that  
24 Miller did. So this is just a report  
25 that Miller issued these securities.

1           Q           And then it talks about the  
2 proceeds from this offering, together  
3 with drilling rebates and some money from  
4 the company's revolver, that it gives  
5 them 70 million in year-term liquidity.

6           A           Yeah. But this doesn't  
7 really have to do with the preferreds.  
8 Where the cash came from is not terribly  
9 relevant to the investments that they're  
10 going to be able to fund.

11          Q           You don't believe that the  
12 company's liquidity would be relevant to  
13 preferred shareholders?

14          A           It would. But this year,  
15 they're talking about liquidity for  
16 investment purposes.

17          Q           You don't believe that would  
18 be relevant to preferred shareholders?

19          A           No, not directly in terms  
20 of -- it's only relevant to the extent  
21 that they need to know that the dividends  
22 will be paid. At least the way you read  
23 it, they're talking about investments  
24 that they'll be able to fund.

25          Q           Drilling that they'll be

1     able to embark on; correct?

2             A             Yes.     Investments.

3             Q             And in order to meet revenue  
4     projections and have liquidity to provide  
5     dividends, they actually have to be  
6     successful in their drilling efforts;  
7     correct?

8             A             Yes.     But this is money  
9     that's already being raised.     So the  
10    first bit you read was about money that  
11    had been raised from preferred  
12    shareholders.

13                         So it was like a piece of  
14    information about the past.     And now the  
15    money's in the firm.     And this is telling  
16    you what they're planning to do with the  
17    money.     That's relevant to the firm as a  
18    whole, not -- not -- it's not information  
19    specific to preferred shareholders or --  
20    I mean none of this gives you a way to  
21    value the C and D.     It's general  
22    information about the firm which is  
23    relevant.

24                         MS. POSNER:     Off the record.

25                         THE VIDEOGRAPHER:     We're

1           going off the record at 9:01. This  
2           marks the end of Media 1.

3                       (A short recess was taken.)

4                       THE VIDEOGRAPHER: We're  
5           back on the record at 9:10. This  
6           marks the beginning of Media 2.

7           Q           Apologies for the mixup with  
8           the exhibit numbers.

9                       I'm going to turn your  
10          attention to Exhibit 66 which would be  
11          the September 8th, 2014 MLV report. Do  
12          you see that?

13          A           Yes.

14          Q           And then in the paragraph on  
15          the first page under Liquidity Enhanced  
16          by Preferred Stock Issuance and Tax  
17          Credits --

18          A           Yes.

19          Q           -- if you review that  
20          paragraph, do you think that's  
21          information that would be relevant to  
22          preferred shareholders?

23          A           Yes. Again, it's  
24          information about securities that were  
25          issued and moneys that were raised from

1     those securities and how they're going to  
2     be used.

3             Q             And also tax credits;  
4     correct?

5             A             Yes.

6             Q             And then if you turn to  
7     page 3, they provide a summary financial  
8     model. Do you see that?

9             A             Yes.

10            Q            And do you see under the  
11     income statement, they list the preferred  
12     dividends there?

13            A            Yes. But this is just the  
14     promised amounts, are they not?

15            Q            I'm not going to answer your  
16     question.

17            A            I'm asking you --

18            Q            I understand you're asking  
19     me. I'm not going to answer your  
20     questions.

21            A            This is just a pro forma  
22     promise amount. So it doesn't really say  
23     anything to the preferred shareholders  
24     about whether or not they'll get paid.  
25     This is only relevant to the equity

1 holders in terms of here's money that's  
2 promised to the preferred shareholders.

3 Q Correct.

4 And under the balance sheet,  
5 it also lists the preferred stock;  
6 correct?

7 A Yes. It's the balances of  
8 the preferred stock outstanding.

9 Q You can turn to Exhibit 67  
10 which is a December 10th, 2014 MLV  
11 analyst report.

12 If you go to the bottom of  
13 this first page, they discuss the payment  
14 of the preferred dividends. Do you see  
15 that? It says, "We also expect to -- we  
16 expect it to honor its preferred  
17 dividends which it considers  
18 'sacrosanct.'" Do you see that? It's  
19 the very last sentence.

20 A Yes.

21 Q You think that's information  
22 that the preferred shareholders would be  
23 interested in?

24 A Yes.

25 Q And then on the next page,

1 the earnings variance analysis under the  
2 income statement, it provides information  
3 about the preferred dividends, including  
4 estimated for 2015?

5 A Yes.

6 Q And then under cash flow, it  
7 does the same; correct?

8 A It says actual 2015 on here.  
9 And I'm just trying to figure out --

10 Q The second -- the column  
11 says "2015 estimated."

12 A Yeah. But it also has an  
13 actual 2015. And I'm just trying to  
14 figure out how you have actuals between  
15 2015 since you're in the middle of the  
16 year. Sorry. Anyway, you were asking?

17 Q They provide -- at least  
18 they purport to provide the 2015 actual  
19 and the 2015 estimated; correct?

20 A Yes.

21 Q And then if you turn the  
22 page, page 3, again, they provide  
23 information under income statement about  
24 the preferred dividends?

25 A Yes. And this is the

1 promised dividend.

2 Q And then if you go under  
3 cash flow statement, it also talks about  
4 the dividends paid, although appears to  
5 be zero thus far on this sheet.

6 A I think that is the common  
7 dividend.

8 Q You might be right.  
9 Under balance sheet, it  
10 talks about the preferred stock. Same  
11 page.

12 A Yes. And I thought we saw  
13 this information on -- maybe it was a  
14 previous report.

15 Q You can turn that to the  
16 side.

17 Turn to Exhibit 68. This is  
18 a Brean Capital report, dated  
19 December 10th, 2014.

20 In the first-full paragraph  
21 under Discussion --

22 A Yes.

23 Q -- it talks about noting  
24 that preferred dividend payments were  
25 sacrosanct in quotes several times.



1 "Giesler noted that the company's focus  
2 on efficient low-risk operations now is  
3 of paramount importance and that more  
4 than a few means of financing debt  
5 service and ongoing operations were on  
6 the negotiating table, including asset  
7 sales, joint venture, additional debt  
8 and/or equity." Do you see that?

9 A Yes.

10 Q Do you think that  
11 information would be relevant to  
12 preferred shareholders?

13 A Yes. But this is just an  
14 analysis reporting something that the  
15 company set, the CEO set. It's not  
16 analysis or an opinion.

17 Q So is it your opinion that  
18 only opinions provided by analysts are  
19 relevant to Cammer Factor 2?

20 A Well, it's the analysts  
21 reports add value, add information  
22 because analysts analyze information  
23 about the firm. They put it together.  
24 They opine on what that means for the  
25 firm. And none of this has anything to

1 do with opinions about the valuation of  
2 the preferred.

3 Q If you could answer my  
4 question, it's your opinion that only  
5 analyst opinions are relevant to Cammer  
6 Factor 2?

7 A I think analyst opinions are  
8 important to Cammer Factor 2.

9 MS. POSNER: Read back the  
10 question.

11 (The requested portion was  
12 read back by the court reporter.)

13 A No. But analyst opinions  
14 are an important part of what's important  
15 to Cammer Factor 2.

16 Q Do you have any academic  
17 literature or case law that supports that  
18 position?

19 A Not sitting here.

20 Q Sitting in your office,  
21 perhaps?

22 A I mean I could search.

23 Q You don't cite any in your  
24 report; correct?

25 A No.

1           Q           You can turn that exhibit  
2 down and turn to Exhibit 69.

3                   This is a May 1st, 2015  
4 report by MLV. And if you look at the  
5 last-full paragraph on the first page  
6 under "Preferred Dividends are the  
7 Elephant in the Room."

8           A           Yes.

9           Q           Do you think that  
10 information in that paragraph would be  
11 relevant to preferred shareholders?

12          A           Again, they're reporting on  
13 a decision that the firm made.

14          Q           Do you think that  
15 information would be relevant to  
16 preferred shareholders?

17          A           Yes, that they would have  
18 received it in press reports or, you  
19 know, the firm's SEC filings and so on  
20 which are public. I don't know if this  
21 was public.

22          Q           If you turn to the next  
23 page, page 3, again, in their summary  
24 financial model, they model out the  
25 preferred dividends. Do you see that

1 under income statement?

2 A Yes.

3 Q And then under balance  
4 sheet, again, it lists the preferred  
5 stock.

6 A Yes.

7 Q You can turn that over.

8 Exhibit 70, this is a report  
9 by Nobel Financial on July 30th, 2015.  
10 If you turn to the second page of this  
11 report on the third bullet point that  
12 starts, "Mill continues to face liquidity  
13 concerns and has preferred dividends,"  
14 you see that paragraph?

15 A Yes.

16 Q Do you think that  
17 information would be relevant to  
18 preferred shareholders?

19 A I mean it would be stale  
20 information by this point. They have  
21 deferred several months before July 30th,  
22 2015. So I mean this would be  
23 information that was already out there.

24 Q Would the information be  
25 important to preferred shareholders?

1           A           Not in this report. By the  
2           time this report came out, this  
3           information would be stale.

4           Q           That wasn't my question.  
5                        Would the information itself  
6           be important to preferred shareholders?

7           A           The information would have  
8           been important to preferred shareholders  
9           when Miller announced that it was  
10          deferring dividend payments.

11                      (The above-referred-to  
12          document was marked as Exhibit 71 for  
13          identification, as of this date.)

14          Q           And then Exhibit 71 is a  
15          report from Brean Capital, dated  
16          September 8th, 2014.

17                      In the first-full paragraph  
18          under investment summary, the sentence  
19          starting "Outside of operating  
20          activities," do you see that sentence?

21          A           Sorry. Is this the report  
22          that created all the trouble?

23          Q           Yes.

24          A           You said "under operating  
25          summary."

1           Q           No.    "Under investment  
2 summary."

3           A           Yes.

4           Q           The sentence starting  
5 "Outside of Operating Activities."

6           A           Yes.   That's the third  
7 sentence.

8           Q           Correct.

9                        You think that information  
10 in that sentence would be relevant to  
11 preferred shareholders?

12          A           I mean again, the  
13 information about the preferred stock  
14 offering would presumably be known to  
15 preferred shareholders since they bought  
16 the offering.

17                       And I don't know when the  
18 tax credits -- the receipt of the tax  
19 credits was first reported.   So this is  
20 summarizing information that may or may  
21 not be out there previously.

22                       MS. POSNER:   Can you repeat  
23 back my question?

24                       (The requested portion was  
25 read back by the court reporter.)

1           A           The information in that  
2 sentence on this document may or may not  
3 be relevant to preferred shareholders.  
4 They would already have known it since  
5 much of it seems to be stale.

6           Q           I'm going to ask it for a  
7 third time.

8                       Do you think the actual  
9 information would be relevant to  
10 preferred shareholders?

11                      MR. BALLARD: Objection to  
12 form.

13           A           When it came out, yes.

14           Q           If you continue down this  
15 first page under balance sheet received  
16 several capital injections, they talk  
17 about one of the preferred Series C  
18 offerings, and then they talk about their  
19 credit facility and tax credits and  
20 Miller's available liquidity. Do you see  
21 that?

22           A           Yes.

23           Q           Do you think that  
24 information would be relevant to  
25 preferred shareholders?

1           A           Yes.   Again, when it came  
2 out.

3           Q           Analyst reports typically  
4 come out after SEC filings and earnings  
5 calls; correct?

6           A           Correct.   And that's because  
7 analysts, you know, integrate the  
8 information, analyze it and provide  
9 opinions on that information.

10          Q           Are you aware that Miller  
11 Energy also discussed its preferred  
12 securities in its SEC filings?

13          A           Yes.

14          Q           And are you aware that  
15 Miller Energy also discussed its  
16 preferred offerings in its earnings  
17 conference calls?

18          A           Yes.

19          Q           Are you aware that Miller  
20 Energy discussed its liquidity on its  
21 earnings conference calls?

22          A           Yes.   These are the type of  
23 information that are in, you know,  
24 earnings conference calls, SEC filings  
25 and such.   So, yes, I'm aware.



1           Q           Are you also aware that  
2 Miller Energy discussed the payment of  
3 dividends to its preferred shareholders  
4 on its earnings conference calls?

5           A           On all of them or on some of  
6 them?

7           Q           Some of them.

8           A           Yes.

9           THE VIDEOGRAPHER: We're  
10 going off the record at 9:23 a.m.

11           (A short recess was taken.)

12           THE VIDEOGRAPHER: We're  
13 back on the record at 9:35 a.m.

14           Q           Dr. Attari, I'm going to  
15 direct your attention to pages 59 and 60  
16 of your report, paragraphs 174 through  
17 177. Do you have that in front of you?

18           A           Yes.

19           Q           In your report, you don't  
20 dispute that the number of market makers  
21 of Miller Energy's common stock meets the  
22 standard under Cammer; correct?

23           A           I don't dispute that, yes.

24           Q           And what is Cammer Factor 3?

25 This is the market maker's factor.

1           A           Sitting here, I can't recite  
2   it for you.

3           Q           What is the purpose of this  
4   Cammer factor?

5           A           To test whether there were a  
6   number of market makers, so that you  
7   would have a market that was orderly and  
8   liquid.

9           Q           And in Cammer, the company  
10   at issue was trading in the  
11   over-the-counter market; right?

12          A           Yes.

13          Q           And why for a security  
14   that's traded on the over-the-counter  
15   market would market makers be important?

16          A           Because if you didn't have  
17   market makers, it would be more difficult  
18   for investors to trade the security.

19          Q           And in the over-the-counter  
20   market, those market makers provide  
21   liquidity to investors; correct?

22          A           Correct.

23          Q           And Miller Energy's  
24   securities, both the common stock, the  
25   Series C and the Series D did not trade

1 over-the-counter; correct?

2 A Correct. But the structure  
3 of equity markets has changed over the 30  
4 years since Cammer.

5 Q They all traded on the New  
6 York Stock Exchange; correct?

7 A They were listed on the New  
8 York Stock Exchange. They traded in a  
9 number of different venues.

10 Q Fair enough.

11 The New York Stock Exchange  
12 has a computerized system to match orders  
13 and provide quotes that does not rely on  
14 market makers; correct?

15 A Yes. I believe the  
16 over-the-counter markets may also have  
17 had that back in the day.

18 Q At the time at Cammer, you  
19 think that's correct?

20 A I don't know.

21 Q You criticized Mr. Coffman  
22 for not providing information on the  
23 number of market makers for the Series C  
24 and Series D; correct?

25 A I just note that he does

1 not.

2 Q Did you determine that there  
3 was an insufficient number of market  
4 makers for the Series C and Series D to  
5 meet this Cammer factor?

6 A I just say that there is no  
7 evidence. So this is not something where  
8 we can say that the security meets this  
9 factor.

10 Q If you turn to page 22 of  
11 your report, in paragraph 67, you're  
12 talking here about how the Series C  
13 trade; correct?

14 A Yes.

15 Q And in this paragraph, you  
16 talk about the fact that there were  
17 market makers for the Series C; correct?

18 A I don't see where you see  
19 that.

20 Q You're discussing the  
21 brokerage houses.

22 And you say, "Brokerage  
23 houses sent orders placed by investors to  
24 the securities exchanges such as the New  
25 York Stock Exchange or other market

1 venues where the orders trade against  
2 orders placed by other investors or  
3 against a bid or an offer placed by a  
4 market maker." Do you see that?

5 A Yes.

6 Q I assume you're --

7 A Or a market maker.

8 Q You're talking here about  
9 there being a market maker for the Series  
10 C; correct?

11 A Yes. Or market maker, yes.

12 Q If you go to the paragraph  
13 right below it, paragraph 68, in the  
14 third sentence, you talk about the fact  
15 that Mr. Zeisman's purchases of the  
16 Series C were quickly executed. Do you  
17 see that?

18 A Quickly executed, I'm trying  
19 to look for those words. And I'm not  
20 seeing them.

21 Q It's the further line down.

22 A Yes. The order was quickly  
23 executed, yes.

24 Q And the fact that the order  
25 was quickly executed indicates that the

1 market for the preferred securities was  
2 liquid; correct?

3 A Yeah. We know that there  
4 was a certain amount of trading volume  
5 for these securities, yes.

6 Q And the fact that the order  
7 was quickly executed is consistent with  
8 an efficient market, isn't it?

9 A The fact that the order was  
10 quickly executed is consistent with there  
11 being volume.

12 Q And does the fact that there  
13 was volume indicate that the market was  
14 efficient?

15 A I think we spoke about the  
16 volume related to Cammer factor earlier.  
17 And I said that the turnover for the  
18 Series C and Series D met the Cammer  
19 thresholds. So, yes.

20 Q Let's turn to pages 63 to 65  
21 of your report. And this is paragraphs  
22 189 through 193.

23 And you're talking about the  
24 Cammer factor dealing with the Form S-3?

25 A Yes.

1           Q           And you agree with  
2   Mr. Coffman that there were times during  
3   the proposed class period when Miller  
4   Energy was eligible to file an S-3;  
5   correct?

6           A           I agree that there were  
7   times when Miller Energy was eligible to  
8   file an S-3, yes.

9           Q           And, in fact, Miller Energy  
10  sold securities pursuant to S-3 during  
11  the class period; correct?

12          A           Miller Energy sold  
13  securities pursuant to an S-3 during the  
14  class period.

15          Q           And if you turn to page 64  
16  of your report, paragraph 191 --

17          A           Yes.

18          Q           -- you state, "Mr. Coffman  
19  ignores that the use of Form S-3 requires  
20  that 'the aggregate market value of the  
21  voting and non-voting common equity held  
22  by non-affiliates of the registrant is  
23  75 million or more.'" Do you see that?

24          A           Yes.

25          Q           And then you cite there to

1 SEC Form S-3. Do you see that?

2 A Yes.

3 Q Did you actually review that  
4 document?

5 A Yes.

6 (The above-referred-to  
7 document was marked as Exhibit 72 for  
8 identification, as of this date.)

9 Q So I've placed in front of  
10 you what's been marked as Exhibit 72.  
11 This is the Form S-3 rule by the SEC that  
12 you cite in your report. Do you  
13 recognize this document?

14 A Yes.

15 Q Do you know when the  
16 requirements for this rule were put in  
17 place?

18 A No.

19 Q I'll represent to you that  
20 they were put in place in 2007 prior to  
21 the start of your proposed class period.

22 MS. POSNER: I'm going to  
23 mark one more document.

24 (The above-referred-to  
25 document was marked as Exhibit 73 for



1 identification, as of this date.)

2 Q And I've handed you what's  
3 been marked as Exhibit 73 which is a  
4 discussion of the Form S-3 rule change in  
5 2007.

6 Have you ever reviewed this  
7 document before?

8 A No.

9 Q I'm going to direct your  
10 attention to page 14 of this document.  
11 And if you could review what it states  
12 under Subheading B, Amendments to Form  
13 S-3 through those first four bullet  
14 points on page 15. Let me know when  
15 you're done.

16 A Do you want me to read the  
17 whole section?

18 Q You can read as much as you  
19 want. But I just want to address your  
20 attention to the first four bullet points  
21 and the few sentences before it.

22 A Okay.

23 Q Doesn't this state that  
24 they're actually changing the rule to get  
25 away from the requirement that there be a

1     75 million public vote requirement for  
2     Form S-3?

3             A             It seems to. But I wouldn't  
4     be able to tell you without reading more  
5     of the document.

6             Q             You can turn back to  
7     Exhibit 72, the actual rule.

8                     And if you go to page 2 of  
9     this document under eligibility  
10    requirements for use of Form S-3, that's  
11    Subheading 1, and then there is  
12    Subheading A, which has the registrant  
13    requirements. Do you see that?

14            A            Yes.

15            Q            Nowhere in here does it talk  
16    about a requirement that there be a  
17    \$75 million public float; correct?

18            A            It's under transaction  
19    requirements.

20            Q            And it's actually only under  
21    one of the transaction requirements;  
22    correctly?

23            A            Correct.

24            Q            It's under B-1 primary  
25    offerings by certain registrants; right?

1           A           Yes.

2           Q           And it lists a whole host of  
3 other types of transactions that don't  
4 have a \$75 million public float  
5 requirement; correct?

6           A           I think some of the others  
7 have other requirements in terms of the  
8 size of the offering and such.

9           Q           But no requirement that  
10 there be a \$75 million public float?

11          A           Correct.

12          Q           Did Miller Energy conduct  
13 any of the public offerings discussed  
14 under B-1 where the \$75 million float  
15 requirement is after December 1, 2014  
16 when its float fell below 75 million?

17          A           Sorry. I did not understand  
18 that question.

19          Q           Sure. That was a mouthful.

20                      Miller Energy had already  
21 issued its initial primary offerings  
22 prior to December 1st, 2014 when its  
23 float fell below 75 million; correct?

24          A           Correct.

25          Q           So according to Exhibit 72

1 and 73, they actually were eligible to  
2 file pursuant to S-3 during the proposed  
3 class period, except for the time periods  
4 when they did not file their Form 10-K on  
5 time; correct?

6 A Again, I mean -- you know, I  
7 would need to read these documents,  
8 Exhibit 73, more carefully to make sure I  
9 understand that the 75 million cap or  
10 float was no longer irrelevant.

11 Q If a company trades  
12 efficiently and is S-3 eligible and then  
13 becomes ineligible due to a late filing,  
14 how would that impact the ability of the  
15 market to reflect publicly-available  
16 information?

17 A I don't know that -- sorry.  
18 Can you repeat that question?

19 MS. POSNER: Can you read  
20 that back?

21 (The requested portion was  
22 read back by the court reporter.)

23 A I mean the S-3 eligibility  
24 in the Cammer factors, the judge seems to  
25 be focused on the public float being

1 sufficient to attract enough investors.  
2 That's in paragraph 189.

3 So as the float -- as the  
4 value falls, presumably, the number of  
5 investors will be interested is reduced.  
6 And the market is likely to be less  
7 efficient than before.

8 MS. POSNER: Can you repeat  
9 back my question again?

10 (The requested portion was  
11 read back by the court reporter.)

12 A So if it becomes ineligible  
13 because of a late filing, investors are  
14 not getting information in a timely  
15 fashion. So the securities would become  
16 less efficient because now there's kind  
17 of a lack of information and more  
18 uncertainty.

19 Q How late was Miller Energy  
20 in filing its Form 10-Ks?

21 MR. BALLARD: Objection to  
22 form. Do you have a time period  
23 you're focusing on?

24 MS. POSNER: Why don't we  
25 start with the first one.

1           A           Sitting here, I can't tell  
2           you precisely.

3           Q           It was no more than a few  
4           weeks; correct?

5           A           If that's what you are  
6           stating, I'll accept that.

7           Q           How about the 10-K towards  
8           the end of the class period when they  
9           were late filing? Do you know how late  
10          they were with filing that 10-K?

11          A           Did they file the 10-K  
12          within the class period? My  
13          understanding was that they didn't get  
14          around to it. But I may be mistaken,  
15          sitting here.

16          Q           Are you aware of any  
17          empirical support that a market becomes  
18          less efficient when it moves from S-3  
19          eligible to S-3 ineligible?

20          A           No. But it seems to be  
21          something that the Cammer judge decided  
22          was important.

23          Q           Let's turn to page 60 of  
24          your report. And I'm going to direct  
25          your attention to pages 60 to 62,

1 paragraphs 178 through 182.

2 And you're talking here  
3 about the Krogman factor dealing with  
4 market capitalization. Do you see that?

5 A Yes.

6 Q And in your report, you  
7 don't dispute that Miller Energy's common  
8 stock market capitalization meets the  
9 standard under Krogman; correct?

10 A I don't believe that there  
11 is a standard as in a threshold under  
12 Krogman. I'm just making the point here  
13 that Mr. Coffman has provided the  
14 information for the common but has not  
15 provided it separately for the C and the  
16 D.

17 Q Do you dispute Mr. Coffman's  
18 opinion that the market cap for the  
19 common stock did meet the Krogman factor?

20 A I don't have an opinion on  
21 that.

22 Q What do you think the  
23 purpose of this Krogman factor is?

24 A I believe it's another  
25 window on this idea that a larger -- a

1 security with a large amount outstanding  
2 is likely to attract more investor  
3 interest.

4 Q And on page 60,  
5 paragraph 178 of your report, you quote  
6 the Krogman court. And you say, "The  
7 court and Krogman v. Sterritt, 2001,  
8 noted that 'the market capitalization  
9 calculated as the number of shares,  
10 multiplied by the prevailing share price,  
11 may be an indicator of market efficiency  
12 because there is a greater incentive for  
13 stock purchasers to invest in more highly  
14 capitalized corporations.'" Do you see  
15 that?

16 A Correct. And that's what I  
17 just said in response to your previous  
18 question.

19 Q And you opine in your report  
20 that the Series C and Series D should be  
21 independently analyzed for purposes of  
22 this Krogman factor; correct?

23 A Correct.

24 Q And why is that?

25 A Because we are trying to



1 determine whether the market for the  
2 Series C and the Series D on a  
3 stand-alone basis were efficient.

4 Q If the point is, is that  
5 stock purchasers might be incentivized to  
6 purchase "in more highly capitalized  
7 corporations," why does analyzing the  
8 market capitalization of each type of  
9 security make sense?

10 A Because you can have -- so  
11 typically,, the way the capitalization of  
12 a corporation is computed is the number  
13 of shares times the value of the shares.  
14 And it's typically a concept that is  
15 applicable only to the common stock of  
16 the company.

17 Here, what we're trying to  
18 do is evaluate a preferred security. And  
19 so if you take the same concept, which is  
20 relevant at a security level and apply it  
21 to the security that we're trying to  
22 analyze, then what we need to do is look  
23 at each of the securities separately.

24 MS. POSNER: Can you read  
25 back my question?

1                   (The requested portion was  
2           read back by the court reporter.)

3           A           I think I answered it. Is  
4           there something specific that I'm  
5           missing?

6           Q           The factor goes to whether  
7           the corporation itself is highly  
8           capitalized; correct?

9           A           If that's what the factor  
10          goes to, then I think one only needs to  
11          do the common. And that's the relevant  
12          thing. But I disagree that that's what  
13          the factor goes to.

14          Q           You disagree that the words  
15          say "stock purchasers to invest in more  
16          highly capitalized corporation" as you  
17          quote in paragraph 178 of your report?

18          A           Yes. It talks about stock  
19          purchasers. It doesn't talk about  
20          preferred stock purchasers or bond  
21          purchasers, you know, buying because  
22          of -- the market capitalization of the  
23          corporation is high.

24          Q           Why don't we turn to page 65  
25          of your report and 66 which is paragraphs

1 194 through 196.

2 And again, you don't in your  
3 report dispute that the bid ask spread of  
4 Miller Energy's common stock meets the  
5 standard under Krogman; correct?

6 A Could you repeat the  
7 question?

8 Q In your report, you don't  
9 dispute that the bid ask spread of Miller  
10 Energy's common stock meets the standard  
11 under Krogman; correct?

12 A Again, I don't think this is  
13 a factor where there is a threshold level  
14 that's specified in the Krogman opinion.  
15 But sitting here, I may be mistaken. So  
16 I don't have an opinion about the common  
17 stock.

18 Q You don't dispute  
19 Mr. Coffman's findings; correct?

20 A I don't have an opinion.

21 Q And then with regard to the  
22 Series C and Series D, you don't dispute  
23 that the bid ask spread for both the  
24 Series C and the Series D meets the  
25 standard under Krogman until the last

1 eight months of the class period;  
2 correct?

3 A Again, I don't have an  
4 opinion until the last eight months of  
5 the period.

6 Q And during the last eight  
7 months of the class period, why do you  
8 believe that the bid ask spreads of  
9 Miller Energy's Series C and Series D  
10 securities increased?

11 A I have not looked into why  
12 they increased.

13 Q Are you familiar with the  
14 academic literature that demonstrates  
15 that bid ask spreads tend to increase as  
16 price per share falls?

17 A I'm aware of the academic  
18 literature that says that lower-priced  
19 securities have wider bid ask spreads  
20 proportionately. I don't know of  
21 available literature that has looked at a  
22 single security through time.

23 Q In your opinion, if a market  
24 for a given stock is generally efficient  
25 and then the market price falls to a

1 level causing the bid ask spread to  
2 increase, does that suggest that the  
3 market is less able to price in new  
4 information?

5 A Yes, because it becomes more  
6 expensive for investors to trade, for new  
7 information to be impounded into prices.

8 Q Becomes more expensive, but  
9 it doesn't become difficult for that  
10 information to be impounded; correct?

11 A Because it's more expensive,  
12 less of the information gets impounded.  
13 The information gets impounded less  
14 quickly. So you can have various factors  
15 that cause the price to be less  
16 efficient.

17 Q Is it your opinion that for  
18 the Series C and Series D for the last  
19 eight months of the class period that  
20 they were impounding new information  
21 slowly?

22 A In this section, I'm looking  
23 at this particular factor which the  
24 courts have specified. And I'm noting  
25 that the bid ask spreads increased which

1 would go against a finding of efficiency.

2 MS. POSNER: Can you read  
3 back my question, please?

4 (The requested portion was  
5 read back by the court reporter.)

6 A I don't have an opinion on  
7 that.

8 Q Wouldn't an increase in bid  
9 ask spreads in response to greater  
10 uncertainty and lower prices be an  
11 indication that the market prices are  
12 responding to information as you would  
13 expect in an efficient market?

14 A I don't see how.

15 Q Are you aware of any  
16 companies that had a threat of delisting  
17 or bankruptcy that did not lead to  
18 increased bid ask spreads?

19 A Could you read that back?

20 (The requested portion was  
21 read back by the court reporter.)

22 A Sitting here, no.

23 Q Let's turn to page 62 of  
24 your report.

25 I'm going to direct your

1 attention to pages 62 to 63, paragraphs  
2 183 to 186. You're talking about the  
3 institutional ownership for the Season Ds  
4 here.

5 In your report, you don't  
6 dispute that there was substantial  
7 institutional ownership of Miller  
8 Energy's common stock throughout the  
9 class period; correct?

10 A There were a number of  
11 institutional owners in the common stock  
12 over the class period.

13 Q In your opinion, is there a  
14 number, a percentage of institutions that  
15 must own a preferred security in order to  
16 support that it is efficient?

17 A A threshold number, no.

18 Q You criticized Mr. Coffman  
19 for not providing information on the  
20 number of institutions that held the  
21 Series C and Series D; right?

22 A I do not criticize him. I  
23 just note that he has not provided  
24 information.

25 Q What method should

1 Mr. Coffman have used to determine the  
2 number of institutions that held the  
3 Series C and Series D?

4 A I believe he says that the  
5 information is not available. So I think  
6 the point here is that the information is  
7 not available. So we do not know that  
8 there were institutional holders.

9 Q Did you do anything to  
10 determine how many institutions held the  
11 preferred Ds throughout the class period?

12 A I believe we may have tried  
13 to pull the information and found it was  
14 not available.

15 Q Do you have any reason to  
16 believe that institutions did not hold  
17 Miller Energy Series C and Series D?

18 A I have no reason to believe  
19 that they did hold the Series C and  
20 Series D.

21 MS. POSNER: You want to  
22 repeat my question?

23 (The requested portion was  
24 read back by the court reporter.)

25 A I have no beliefs on the



1 issue.

2 Q Why don't we turn to page 55  
3 of your report. I'm going to direct your  
4 attention to pages 55 to 56, paragraphs  
5 161 to 166. You're talking about auto  
6 correlation with regard to the C and Ds  
7 in this section.

8 In your report, you discuss  
9 that there are a number of ways to test  
10 for auto correlation; correct?

11 A Correct.

12 Q And Mr. Coffman's auto  
13 correlation test analyzed whether a  
14 return on a given day is predictable by  
15 the prior's day return?

16 A Corrected.

17 Q And then he conducted a  
18 robustness check for every quarter of the  
19 proposed class period; correct?

20 A I don't know that I would  
21 call it a robustness check. He computed  
22 it separately for every quarter of the  
23 class period, correct.

24 Q Is it your opinion that the  
25 methodology that Mr. Coffman used to test

1 for auto correlation is invalid?

2 A It's my opinion that it's  
3 limited.

4 Q So your opinion is not that  
5 it's invalid; just that it's limited; is  
6 that correct?

7 A If the test is for auto  
8 correlations, then it's invalid because  
9 it only tests for a very limited form of  
10 auto correlation.

11 Q Are you aware that dozens,  
12 if not hundreds of courts, have accepted  
13 the same auto correlation test that  
14 Mr. Coffman conducted in securities fraud  
15 class actions?

16 MR. BALLARD: Objection to  
17 form.

18 A Could you repeat that,  
19 please?

20 (The requested portion was  
21 read back by the court reporter.)

22 A I'm not aware.

23 (The above-referred-to  
24 document was marked as Exhibit 74 for  
25 identification, as of this date.)

1           Q           Dr. Attari, I've marked as  
2   Exhibit 74, an expert report you  
3   submitted in connection with that case we  
4   were discussing earlier today, EGC;  
5   correct?

6           A           Correct.

7           Q           Do you recognize this  
8   report?

9           A           Yes.

10          Q           In this expert report, you  
11   admit that "The most common tests for  
12   auto correlation is the one that tests if  
13   a return on a given day is predictable by  
14   the prior day's return"; correct?

15          A           Yes. sorry. What page?

16          Q           If you go to page 8,  
17   paragraph 28, the first sentence there --

18          A           Yup.

19          Q           -- in that case, you opined  
20   that the stock at issue, EGC, was not  
21   efficient; correct?

22          A           Correct.

23          Q           And the auto correlation  
24   test you conducted there tested if a  
25   return on a given day is predictable by

1 the prior day's return; correct?

2 A Correct.

3 Q And the plaintiffs' expert  
4 conducted the same test; right?

5 A I have no recollection. I  
6 don't think that he had conducted the  
7 test prior to this.

8 Q As opposed to in his  
9 rebuttal report?

10 A Correct.

11 Q You both conducted  
12 robustness tests, but you used different  
13 one-year time periods to conduct that  
14 robustness check. Do you remember that?

15 A I recall what I did, yeah.  
16 There were different periods, yes.

17 Q The results of your  
18 robustness tests was one of the primary  
19 basis for your opinions that EGC was  
20 inefficient; correct?

21 A Yes. So in this case, what  
22 I was testing was whether EGC's stock  
23 price traded in an efficient market.  
24 And, you know, as I note in my report in  
25 Miller, there are an array of auto

1 correlation tests that can be used to  
2 identify violations of market efficiency  
3 and violations of weak form market  
4 efficiency.

5 Mr. Coffman has done one of  
6 those tests and claims that it somehow is  
7 evidence of efficiency which is where --  
8 kind of the flaw that I'm pointing out in  
9 his work.

10 Q You conducted that same test  
11 to determine that there was inefficiency  
12 in the EGC case; correct?

13 A Correct.

14 Q And the plaintiffs' expert  
15 there conducted the same test and came to  
16 the opinion that the market for EGC was  
17 efficient based in part on that auto  
18 correlation test; correct?

19 A I don't believe that the  
20 plaintiff expert did that. I think the  
21 plaintiff expert -- and sitting here, I'm  
22 kind of going from recollection.

23 Q Sure.

24 A The plaintiffs' expert  
25 pointed out that my auto correlation

1 results -- that he had different results  
2 on the tests I conducted. And since I  
3 hadn't conducted a broader array of  
4 tests, he was rebutting whatever I had  
5 done.

6 Q The court in EGC determined  
7 that plaintiffs' auto correlation test  
8 was a factor supporting efficiency in  
9 that case; correct?

10 A I have no recollection. I  
11 thought it was more that my -- my  
12 evidence had been rebutted by them  
13 successfully, not that this was a factor  
14 in supporting efficiency.

15 (The above-referred-to  
16 document was marked as Exhibit 75 for  
17 identification, as of this date.)

18 Q I've marked as Exhibit 75,  
19 the court's order in the EGC case, which  
20 is Docket 10CV00252, in the Central  
21 District of California. And I'll turn  
22 your attention to pages 27 and 28 of this  
23 order.

24 A I was just looking up the  
25 EGC report for something that you had

1 asked earlier. What pages?

2 Q 27 and 28.

3 A Yes.

4 Q And in this section, the  
5 court finds that the plaintiffs' experts  
6 auto correlation study found no  
7 significant auto correlation for EGC's  
8 returns over the class period.

9 That's the second-full  
10 paragraph under the heading.

11 And then it discusses your  
12 position with regard to auto correlation.  
13 And ultimately, the court holds that the  
14 factor weighs in plaintiffs' favor on  
15 page 28; correct?

16 A Right, as in it doesn't  
17 weigh in defendant's favor. I don't  
18 think this is evidence of efficiency.  
19 The evidence that I had provided against  
20 efficiency did not hold.

21 Q So when the court says "the  
22 factor weighs in plaintiffs' favor," you  
23 don't understand that to mean that the  
24 court is finding that plaintiffs' expert  
25 has demonstrated a factor that supports

1 market efficiency?

2 A No. I believe that it's  
3 that the defendant's expert had -- did  
4 not support market inefficiency.

5 Q I'm going to show you what  
6 was previously marked as Exhibit 42. And  
7 it's just portions of Exhibit 42. It's  
8 the coversheet and then pages 57, 58, 59,  
9 60 and Exhibit 17C and 17D from the  
10 corrected report of Chad Coffman. Do you  
11 see that?

12 A Yes.

13 Q Just trying to save a few  
14 trees here.

15 If you turn to Exhibit 17C  
16 and Exhibit 17D, charts or tables in  
17 Mr. Coffman's report --

18 A Yes.

19 Q -- do you agree that the  
20 auto correlation coefficient switches  
21 inconsistently from positive to negative  
22 and back throughout the class period for  
23 both the Series C and Series D?

24 A It switches from positive to  
25 negative and back. Actually, sorry. It



1 switches from negative to positive and  
2 back.

3 Q And if the auto correlation  
4 coefficient reverses regularly, is that  
5 consistent with the ability of an  
6 arbitrage opportunity?

7 A It could be consistent with  
8 the ability for an arbitrage opportunity.  
9 It's just not consistent, you know, with  
10 an arbitrage that says I will use, yes,  
11 it is, a return to predict today's return  
12 or today's return to predict tomorrow's  
13 return. It could be more complex  
14 opportunities.

15 Q Can you explain what kind of  
16 complex arbitrage opportunity would be  
17 able to take place where the auto  
18 correlation coefficient reverses  
19 regularly like this?

20 A Sitting here, I haven't done  
21 the work for it. But there are a number  
22 of different trading strategies that  
23 people have published over the years.

24 And this just says that you  
25 need to look at something more complex

1     than using, yes, it is, a return to  
2     predict today's return.

3             Q             In a market with no auto  
4     correlation, would you expect to observe  
5     the sign on the coefficient change  
6     regularly or would you expect to observe  
7     the same sign?

8             A             In a market with no auto  
9     correlation, I would expect the sign to  
10    change. But I won't expect any of the  
11    auto correlations to be statistically  
12    significant.

13            Q            So it's your opinion that in  
14    a market with no auto correlation, there  
15    could not be any statistically  
16    significant auto correlations?

17            A            Well, if you looked at a  
18    large enough -- if you looked at a large  
19    enough number of auto correlations, so,  
20    you know, you'd find 5 percent of them to  
21    be statistically significant. But the  
22    percentages that are statistically  
23    significantly exceeds that 5 percent  
24    threshold.

25            Q            So your opinion is that it

1 would have to be less than 5 percent in  
2 order for there to be no auto  
3 correlation?

4 A Well, if it is randomly  
5 generated auto correlation, so let's say  
6 that I have an un-auto correlated series,  
7 I have generated a set of random numbers  
8 to not be auto correlated and then I  
9 compute auto correlations on them and I  
10 do this experiment over and over  
11 thousands of times, then just basic  
12 statistics tells me that 5 percent of the  
13 time, I will find an auto correlation  
14 that is different than 0 at the  
15 95 percent significance level.

16 Q That's a little bit  
17 different, though, than what I just asked  
18 you.

19 MS. POSNER: Why don't you  
20 read that back.

21 (The requested portion was  
22 read back by the court reporter.)

23 A I didn't understand the  
24 question. And I was trying to explain.

25 Q So let me try to ask it a

1 different way then.

2 Can a statistically  
3 significant auto correlation coefficient  
4 appear based upon the timing of news?

5 A You'll have to provide more  
6 of an example, more information than  
7 that.

8 Q What are the bases that  
9 could cause auto correlation to be  
10 statistically significant?

11 A Over what window of time?

12 Q Any window of time.

13 A I really don't know. I  
14 don't understand the question, is the  
15 problem. What causes auto correlation to  
16 be statistically significant is if you  
17 have systematic reversals or systematic  
18 continuations and returns.

19 Q Are those the only reasons  
20 that you could see statistically auto  
21 correlation coefficients?

22 A I think mathematically,  
23 that's what would give you a positive or  
24 negative auto correlation. And if it  
25 were not systematic, it's unlikely to be

1 statistically significant.

2 Q Let's turn to page 63 of  
3 your report. This is paragraphs 187 and  
4 188. You're talking about the options  
5 factor here.

6 In your report, you don't  
7 dispute that there was options trading on  
8 Miller Energy's common stock throughout  
9 the proposed class period; correct?

10 A No, I don't.

11 Q Mr. Coffman did not opine  
12 that there was option trading on the  
13 Series C or Series D; correct?

14 A I don't recall.

15 Q Were there any barriers to  
16 options trading on the preferred  
17 securities?

18 A I'm not sure I understand  
19 the question.

20 Q Is there any reason why  
21 there couldn't be options trading on the  
22 Series C or Series D?

23 A I mean I don't think I'm  
24 talking about traded. I'm talking about  
25 listed. So there were no listed options.

1           Q           Correct.

2                   My question is, is there any  
3 reason why there could not be any listed  
4 options on the preferred Series C or  
5 Series D?

6           A           Sitting here, I don't know.

7           Q           What are the reasons why  
8 there might not be options traded on a  
9 given security?

10          A           Often, if the underlying  
11 market is not sufficiently deep and  
12 liquid, people will not list options. So  
13 that could be one of the barriers.

14          Q           Any other barriers that you  
15 can think of or any other reasons why  
16 there might not be options trading on a  
17 given security?

18          A           Sitting here, no.

19          Q           Do you know how common it is  
20 for there to be options traded on  
21 preferred securities?

22          A           No.

23          Q           Let's turn to page 66 of  
24 your report. And I'm going to turn your  
25 attention to pages 66 through 71. And

1     it's paragraphs 197 to 208.

2                     And this is your discussion  
3     of the 10(b) damages and whether they can  
4     be calculated on a class-wide basis. Are  
5     you there?

6             A             Yes.

7             Q             You provide one reason for  
8     your opinion that Section 10(b) damages  
9     cannot be calculated on a class-wide  
10    basis; correct?

11            A            I provide an explanation of  
12    why Section 10(b) damages cannot be  
13    computed on a class-wide basis.

14            Q            And the reason that you  
15    provide is that according to you, the  
16    methodology proposed by Mr. Coffman does  
17    not properly distinguish between  
18    high-risk and low-risk investors;  
19    correct?

20            A            That's the explanation, yes.

21            Q            I'm going to turn your  
22    attention to page 70, paragraph 207.

23            And you say here, "Where  
24    plaintiffs pursue a materialization of  
25    the risk theory, I understand the damages

1 depend on the risk tolerance of the  
2 investors in the proposed class." Do you  
3 see that?

4 A Yes.

5 Q Where did you get that  
6 understanding?

7 A From discussions with  
8 counsel and from a review of an opinion  
9 in, I think, the BP case.

10 Q Are you an attorney?

11 A No. That's why I discussed  
12 with counsel.

13 Q Fair enough.

14 If your understanding is  
15 incorrect, how does that impact your  
16 opinion regarding the ability to  
17 calculate Section 10(b) damages on a  
18 class-wide basis?

19 MR. BALLARD: Objection to  
20 form.

21 A It depends on how it is  
22 incorrect.

23 Q If there is no requirement  
24 when plaintiffs pursue a materialization  
25 of the risk theory that damages depend on



1 the risk tolerance of the investors in  
2 the proposed class, how would that impact  
3 your opinion with regard to the ability  
4 to calculate 10(b) damages on a  
5 class-wide basis?

6 A So all investors are treated  
7 the same. This reason would not be  
8 relevant.

9 Q If plaintiffs and  
10 Mr. Coffman are proposing to use an  
11 out-of-pocket methodology that seeks to  
12 measure the mispricing in the security at  
13 each point in time as the basis for  
14 competing damages, do your opinions still  
15 apply?

16 A No.

17 Q In his report or during his  
18 testimony, did Mr. Coffman ever suggest  
19 he was proposing that damages be  
20 calculated in any way other than the  
21 standard out-of-pocket methodology?

22 MR. BALLARD: Objection to  
23 form.

24 A Mr. Coffman did not. But  
25 the complaint and the motion to dismiss

1 indicate that it is a materialization of  
2 risk-base damage that plaintiffs are  
3 asking for.

4 Q But that understanding is --  
5 strike that.

6 The relevance of what you  
7 just mentioned, that the plaintiffs  
8 allege a materialization of the risk  
9 theory, is your understanding that  
10 somehow that the risk tolerance of the  
11 investors is relevant in those  
12 circumstances; correct?

13 A Can you read that back,  
14 please?

15 (The requested portion was  
16 read back by the court reporter.)

17 MR. BALLARD: Objection to  
18 form.

19 A I don't understand the  
20 question.

21 Q Let me rephrase it. It was  
22 a poorly-phrased question.

23 Plaintiffs don't allege a  
24 theory of damages outside of  
25 out-of-pocket damages in their complaint;

1 correct?

2 A I thought every disclosure  
3 says that risk materialized. So I don't  
4 know how to read that other than it being  
5 a materialization of risk theory.

6 Q And your assumption is that  
7 if there's a materialization of the risk  
8 theory, then somehow you have to  
9 differentiate between high-risk and  
10 low-risk investors?

11 MR. BALLARD: Objection to  
12 form.

13 A Well, if it's a  
14 materialization of risk theory, then you  
15 may have to distinguish between high-risk  
16 and low-risk investors.

17 Q And that's based on your  
18 understanding from counsel; correct?

19 MR. BALLARD: Objection to  
20 form.

21 A And from reading the Ludlow  
22 opinion.

23 Q Did Mr. Coffman suggest  
24 anywhere in his report or during his  
25 testimony that the proper measure of

1 damages for purchasers of Miller  
2 securities would consist of 'compensation  
3 based on the full price decline' on the  
4 corrective disclosures?

5 A I don't recall, sitting  
6 here, what he wrote in his report and his  
7 deposition. A number of the disclosures  
8 in the complaint seem to have nothing to  
9 do with the alleged misstatements.

10 Q Are you aware that the  
11 out-of-pocket methodology has been used  
12 in numerous cases alleging a  
13 materialization in the risk theory?

14 A I'm not aware of that.

15 Q Let's turn to your  
16 discussion in Section 11 damages. And  
17 this is pages 19 through 34 of your  
18 report. And it's paragraphs 54 through  
19 111. Are you there?

20 A Yes.

21 Q I'm going to try to combine  
22 the C and Ds so we don't have to do this  
23 twice.

24 On page 19 of your report,  
25 paragraph 56 and then on page 28 of your

1 report, paragraph 89, the first  
2 paragraph, you're discussing the Series  
3 C, and then the second paragraph, you're  
4 discussing the Series D.

5 A Yes.

6 Q You say that "The existence  
7 of a statutory damages formula 'renders  
8 knowledge of the individual circumstances  
9 of each proposed class member  
10 irrelevant.'" Do you see that?

11 A Yes.

12 Q And you cite to  
13 paragraph 102 of Mr. Coffman's report;  
14 correct?

15 A Correct.

16 Q So let's look back at  
17 Exhibit -- what was Exhibit 42,  
18 Mr. Coffman's report and the portions of  
19 it.

20 And if you look at  
21 paragraph 102 of his report, all it says  
22 there is "That given there's a  
23 statutorily defined formula for  
24 Section 11 damages, it is clear that  
25 damages under Section 11 can be

1     calculated using a common methodology for  
2     members of the Section 11 class";  
3     correct?

4             A             Correct.

5             Q             He doesn't say anything  
6     about the irrelevance of knowledge and  
7     the individual circumstances of each  
8     proposed class member; right?

9             A             Well, a common methodology  
10    implies that the individual circumstances  
11    are not relevant.

12            Q            The individual circumstances  
13    that you're talking about here are which  
14    offering they purchased in or traceable  
15    to, the price they paid and either the  
16    price they sold their shares at or  
17    evidence that they held through the  
18    filing of the complaint; correct?

19            A            Yes.

20            Q            Are you aware of how the  
21    claims process works in securities fraud  
22    class actions?

23            A            Yes.

24            Q            And are you aware that  
25    members of the class submit trading

1 information and that there's a  
2 court-appointed claims administrator that  
3 confirms the completeness and accuracy of  
4 the claims submitted?

5 A Yes.

6 Q And that's with regard to  
7 both Section 11 claims and Section 10(b)  
8 claims; correct?

9 A Correct. As far as I know,  
10 the information they submit is when they  
11 purchase, what price they purchase, when  
12 they sold, what price they sold. It does  
13 not provide information that would allow  
14 you to determine which offering the  
15 securities came from.

16 Q The information submitted in  
17 that claims process would include the  
18 date of purchase; correct?

19 A It would include the date of  
20 purchase.

21 Q And it would include the  
22 price of purchase; correct?

23 A It would include the price  
24 of purchase.

25 Q And it would also include

1     whether the purchase was made from an  
2     underwriter directly; correct?

3             A             If that information was  
4     requested, yes.

5             Q             Are you aware that there's  
6     also a court-approved plan of allocation  
7     which details how each claim is  
8     calculated in securities fraud class  
9     actions?

10            A            Yes.

11            Q            And you're aware that that  
12    is true with regard to both Section 11  
13    and Section 10(b) claims?

14            A            Yes.

15            Q            And with regard to a 10(b)  
16    claim, you would need to know when an  
17    investor purchased their shares and the  
18    price they purchased at and when they  
19    sold their shares and the price they sold  
20    that in order to calculate their  
21    Section 10(b) damages; correct?

22            A            Yes.

23            Q            Is it your position that in  
24    a typical securities fraud class action,  
25    you couldn't conduct class-wide damages



1 without that specific information?

2 A In a 10(b)?

3 Q In a 10(b) case.

4 A You can estimate damages.

5 You can compute damages.

6 Q You can come up with a  
7 standard formula for calculating the  
8 damages; correct?

9 A With the information or  
10 without?

11 Q With the information.

12 A With the information, you  
13 can come up with a formula for  
14 calculating damages.

15 Q Is it your opinion that  
16 Section 11 damages for investors who can  
17 demonstrate that they purchased directly  
18 in one of the offerings at issue in this  
19 case cannot be calculated on a class-wide  
20 basis?

21 A Prior to getting information  
22 or after getting information?

23 Q After getting information  
24 that they directly purchased in an  
25 offering.

1           A           So after you have  
2 information on investors who purchase in  
3 an offering, you can calculate damages  
4 for the investors who purchase in the  
5 offering.

6                       If the class -- if there are  
7 investors who haven't submitted the  
8 information, you cannot compute damages  
9 for all investors who may have purchased  
10 in the offering.

11           Q           If you had information, you  
12 would use the statutory formula for  
13 calculating Section 11 damages for that  
14 individual; correct?

15                       MR. BALLARD: Objection to  
16 form.

17           Q           Do you want me to repeat it?

18           A           Yes.

19           Q           Sure.

20                       If you had an investor's  
21 trading information, demonstrating that  
22 they purchase directly in an offering,  
23 you would use the Section 11 statutory  
24 formula to calculate their damages;  
25 correct?

1           A           If you had their purchase  
2           and sale information, you could compute  
3           the damages to that investor for people  
4           who purchase in the offering.

5                       My understanding is here,  
6           the class is defined only as people who  
7           were damaged. So there would be some  
8           people who were not damaged who wouldn't  
9           be part of the class.

10          Q           Let's turn to page 21 of  
11          your report. And the similar information  
12          is repeated on page 30 of your report  
13          with regard to the Series D investors.

14          A           What paragraph?

15          Q           Paragraph 64 through 66 and  
16          then paragraphs 95 on page 30.

17                       Essentially, you're  
18          discussing the DTC in both of these  
19          sections?

20          A           Yes.

21          Q           You opine with certain  
22          exceptions, purchasers of the Series C  
23          and Series D cannot trace their shares  
24          because they did not receive share  
25          certificates.

1                   And it said their stock was  
2 held in book entry form at the DTC?

3           A           Correct.

4           Q           Are you aware that the  
5 overwhelming majority of investors in  
6 U.S.-based markets do not have share  
7 certificates but instead hold their  
8 shares in book entry form in the DTC?

9           A           Yes.

10          Q           And that's been the case  
11 since at least 2011; correct?

12          A           At least, yes.

13          Q           Do you know when companies  
14 essentially stopped issuing share  
15 certificates?

16          A           Sometime in the '70s. But I  
17 may be getting the date wrong.

18          Q           And on page 22 of your  
19 report, paragraph 67, you note that  
20 investors who trade through brokerage  
21 houses have no way of knowing who sold  
22 the securities they purchased or who  
23 purchased the securities they sold. Do  
24 you see that?

25          A           Yes.

1           Q           You're talking again here  
2           about secondary market purchases, not  
3           individuals who purchase directly in an  
4           offering; correct?

5           A           Correct.

6           Q           That fact is true for  
7           secondary market purchasers in any  
8           security, not just investors in Miller  
9           Energy's Series C and Series D; correct?

10          A           Correct.

11          Q           On page 25 of your report,  
12          this is paragraph 79, you  
13          state, "After-market purchasers, those  
14          who purchase their shares in open-market  
15          trading, not directly in one of the  
16          public offerings, cannot trace their  
17          shares to these offerings. Investors who  
18          place orders in the open market will have  
19          their brokerage settle that order through  
20          the DTC by adjustment of the brokerage's  
21          pro rata share of the security's fungible  
22          bulk held at the DTC." Do you see that?

23          A           Yes.

24          Q           Again, that is true for  
25          virtually any after-market purchaser

1 bringing a Section 11 claim, not just  
2 investors in Miller Energy's Series C and  
3 Series D; correct?

4 MR. BALLARD: Objection to  
5 form.

6 A That is true for any  
7 investor trading in the secondary market.

8 Q If you could trace an  
9 investor's purchase to a specific Series  
10 C or Series D offering and you knew the  
11 price they purchased at and you knew the  
12 price they paid at or whether they held  
13 through the filing of the complaint, you  
14 could calculate their damages according  
15 to the statutory formula for Section 11  
16 claims; correct?

17 Why don't I repeat it.

18 If you could trace an  
19 investor's purchase to a specific Series  
20 C or Series D offering, you knew the  
21 price they purchased at and you knew the  
22 price they sold at or whether they held  
23 through the filing of the complaint, you  
24 could calculate their damages according  
25 to the statutory formula for Section 11;

1 correct?

2 A You would have the starting  
3 point for their damages according to the  
4 statutory formula. There's an offset for  
5 unrelated declines that you'll still have  
6 to incorporate, correct.

7 Q You're not offering an  
8 opinion in this case with regard to  
9 negative causation; correct?

10 A Not at this stage.

11 THE VIDEOGRAPHER: We're  
12 going off the record at 10:40 a.m.  
13 This marks the end of Media 2.

14 (A short recess was taken.)

15 THE VIDEOGRAPHER: We're  
16 back on the record at 10:49 a.m.  
17 This marks the beginning of Media 3.

18 Q I believe we discussed this  
19 earlier.

20 But all of Miller Energy's  
21 securities -- the common stock, the  
22 Series C, the Series D -- all traded on  
23 the New York Stock Exchange throughout  
24 the proposed class period; correct?

25 A They were all listed on the

1 New York Stock Exchange and traded on a  
2 bunch of venues.

3 Q If you turn to page 60 of  
4 your report, I'm going to direct your  
5 attention to your Footnote 208.

6 And there, you state your  
7 opinion that there is strong disagreement  
8 in the finance research literature on  
9 whether U.S. equity markets are efficient  
10 or prone to various anomalies and  
11 behavioral biases.

12 And then you discuss the  
13 fact that it's notable that the vast  
14 majority of the finance literature  
15 analyzes the stocks listed on the New  
16 York Stock Exchange and NASDAQ, the same  
17 major exchanges on which according to  
18 Mr. Coffman, a listing virtually  
19 guarantees market efficiency. Do you see  
20 that?

21 A Yes.

22 Q In the EGC case we were  
23 discussing earlier, you claimed that the  
24 courts recognize that securities that  
25 trade or listed on the New York Stock



1 Exchange are likely to be efficient,  
2 didn't you?

3 A Likely to be, yes. And  
4 sorry, courts. This is about the  
5 academic research literature which has a  
6 different perspective.

7 Q Sure.

8 But you also did admit in  
9 that case as well that academic research  
10 with regard to markets on which a  
11 security trades is indicative of the  
12 efficiency of the stock, didn't you?

13 A Sorry. Can you repeat that,  
14 please?

15 (The requested portion was  
16 read back by the court reporter.)

17 MR. BALLARD: Objection to  
18 form.

19 A If you can show me that,  
20 that will be helpful.

21 Q Look on what we previously  
22 marked as Exhibit 74 which is your  
23 report.

24 A Yes.

25 Q If you look on page 3 of

1 this report, paragraph 11, the end there  
 2 of that paragraph, you say, "First, while  
 3 it is not dispositive when a stock is  
 4 listed on a market that is not efficient  
 5 such as the OTCBB, it's far less likely  
 6 that it trades efficiently than a stock  
 7 listed on a national exchange." Do you  
 8 see that?

9 A Yes.

10 Q And the corollary to that  
 11 sentence is that a security that does  
 12 trade on a national exchange is more  
 13 likely to be efficient than not; correct?

14 A I missed the last bit. I  
 15 may have started speaking.

16 (The requested portion was  
 17 read back by the court reporter.)

18 A I don't see how that is the  
 19 corollary. All that you can get to is  
 20 that it's more likely to be efficient  
 21 than a security that trades on the OTCBB.

22 Q That's fair enough.

23 MS. POSNER: Let's mark  
 24 Exhibit 76.

25 (The above-referred-to

1 document was marked as Exhibit 76 for  
2 identification, as of this date.)

3 Q This is a deposition  
4 transcript of a deposition you gave in  
5 the EGC case; correct?

6 A Correct.

7 Q Do you recognize this  
8 transcript?

9 A I have not seen this. But,  
10 yes, I remember being deposed.

11 Q You don't recall having to  
12 sign the transcript?

13 A Probably. I must have seen  
14 it.

15 Q If you turn to page 16 of  
16 the transcript, and I'm going to direct  
17 your attention to pages 16 through 19.  
18 So if you want to review those quickly,  
19 that might be easier.

20 A 16 to what?

21 Q 19.

22 A Okay.

23 Q So in the EGC case, you  
24 testified under oath that it's an  
25 "economically valid statement" to say

1       that the type of market a stock trades on  
2       is indicative of efficiency; correct?

3                       MR. BALLARD:  Objection to  
4       form.

5               A           Yes.

6               Q           And you also testified under  
7       oath that the "academic literature in  
8       general is supportive of that statement";  
9       correct?

10                   MR. BALLARD:  Objection to  
11       form.

12              A           Generally, yes.

13              Q           Generally, you actually  
14       provided that statement under oath;  
15       correct?

16              A           In general, it says -- I  
17       mean the whole point of the academic  
18       literature is they're testing the  
19       efficiency of NASDAQ and NYSE stocks.  I  
20       think 30, 40 years of hundreds of years  
21       of research in finance has been wasted.

22              Q           Did you perform an event  
23       study of Miller Energy's common stock  
24       during the proposed class period?

25              A           No.

1           Q           You're not offering the  
2           opinion that Miller Energy's common stock  
3           was inefficient during the proposed class  
4           period; correct?

5           A           I'm not offering an opinion,  
6           one way or the other.

7           Q           Let's turn back to your  
8           report, pages 53 to 54, and primarily,  
9           paragraphs 157 and 158.

10                       Is it your opinion that  
11           comparing earnings releases to non-news  
12           days is not an appropriate methodology  
13           for an event study?

14           A           It depends on the purpose of  
15           the event study.

16           Q           So how about in this  
17           specific case? Do you think it's an  
18           inappropriate methodology in this case?

19           A           In this case, in the context  
20           of Mr. Coffman has used it or just  
21           generally?

22           Q           Generally for this case, is  
23           that methodology an appropriate  
24           methodology to use to determine whether a  
25           market is efficient?

1           A           I don't think it's an  
2 approach that allows you to get to  
3 that -- to be able to make a  
4 determination of efficiency.

5           Q           Are you aware that that  
6 methodology is often called the FDT  
7 methodology?

8           A           I think Mr. Coffman may have  
9 referred to it as that.

10          Q           I actually don't think Mr.  
11 Coffman did. But I'm asking you whether  
12 you're familiar with that phrase, the FDT  
13 methodology.

14          A           I mean looking at the  
15 footnote on the page, I'm guessing FDT is  
16 Ferrillo Dunbar Tabak, no, I was not.

17          Q           Are you aware that this  
18 methodology of comparing earnings,  
19 releases to non-news days is regularly  
20 accepted by courts throughout the country  
21 in certifying securities fraud class  
22 actions?

23                       MR. BALLARD: Objection to  
24 form.

25          A           With the threshold of

1 5 percent or with a different threshold?

2 Q I'm just talking about the  
3 methodology itself.

4 A I'm aware that courts have  
5 looked at -- that says one of the pieces  
6 of information they evaluated.

7 Q In your footnote there,  
8 Footnote 178, you claim that one of the  
9 authors, Dr. Tabak, purportedly has  
10 strong misgivings about the  
11 appropriateness of this test. Do you see  
12 that?

13 A Yes.

14 Q Are you aware that Dr. Tabak  
15 has submitted expert reports to courts  
16 using this methodology?

17 A I don't know. I mean if you  
18 tell me that he has, maybe he has.

19 Q In conducting an event study  
20 of a company's earnings releases, is it  
21 your opinion that 50 percent of the  
22 earnings release dates would need to be  
23 statistically significant at the  
24 95 percent level in order for an event  
25 study to demonstrate market efficiency?

1           A           I don't know that it's  
2   50 percent precisely. But there is a  
3   literature that has found that the  
4   returns on earnings announcement days are  
5   more volatile than on other dates.

6                   And so based on the time  
7   period that are at issue and the industry  
8   at issue, one would be able to come up  
9   with a threshold. And that threshold is  
10  going to be much higher than 5 percent.

11          Q           What do you think that  
12  threshold should be?

13          A           Well, it's not just a number  
14  that I can make up; right? It's going to  
15  be based on the level of volatility on  
16  earnings announcements, relative to, you  
17  know, no news or non-event days and the  
18  time period that one is studying.

19                   And based on those two  
20  factors, if it turns out that earnings  
21  announcements in general are twice as  
22  volatile as no news days for the period  
23  and, you know, for the comparable set of  
24  companies, then you can take that  
25  information and come up with an



1 appropriate threshold.

2 And if it's twice as  
3 volatile, it'll be much higher than  
4 5 percent of threshold. It could be --  
5 you know, depending on that multiple,  
6 50 percent could be the right number.

7 Q So what you're saying is in  
8 your opinion, that threshold would be  
9 different for every single company?

10 A The threshold could be  
11 different for every company and time  
12 period, yes.

13 Q And in this case, is it your  
14 opinion that that threshold should be  
15 50 percent?

16 A I don't have an opinion on  
17 that.

18 Q So you don't have an opinion  
19 on what the threshold should be at all?

20 A I have an opinion that it is  
21 higher than 5 percent. I haven't done  
22 the work to determine what the right  
23 threshold is.

24 Q And you're saying higher  
25 than 5 percent because that's the T-Stat

1     that you would expect to see outside  
2     of -- explaining random movements?

3             A             Correct, on non-news days.  
4                             (The above-referred-to  
5     document was marked as Exhibit 77 for  
6     identification, as of this date.)

7             Q             This is a NERA report, dated  
8     August 2016, by Dr. David Tabak, titled  
9     "What Should we Expect when Testing for  
10    Price Response to News in Securities  
11    Litigation?"

12                            Have you ever seen this  
13    before?

14            A            I probably have.

15            Q            Do you know what NERA is?

16            A            Yes.

17            Q            What is NERA?

18            A            NERA is a firm that operates  
19    in the same industry as we do.

20            Q            They're, like you, like CRA,  
21    typically a defense expert in securities  
22    fraud class actions; correct?

23                           MR. BALLARD: Objection.

24            A            I don't know -- I know that  
25    they are typically experts in various

1 kinds of litigation. I don't know  
2 anything beyond that. And I wouldn't  
3 classify us as being on the defendant's  
4 side either.

5 Q Let's turn to page 2 and 3,  
6 actually, 3 to 4 of this paper on pages 3  
7 and 4.

8 Dr. Tabak goes through the  
9 fact that what is referred to as the FDT  
10 test has been regularly accepted by  
11 courts. Do you see that?

12 A Sorry. Can you point me  
13 to --

14 Q Yeah. The FDT Test and Its  
15 Successes is the header.

16 A Okay.

17 Q And then it talks through  
18 some of the court opinions on this  
19 matter. And, in fact, on page 3 in the  
20 middle of the page, it says, "More  
21 recently, courts have accepted a number  
22 of tests of market efficiency that  
23 directly follow the FDT test procedures,  
24 if not citing the FDT paper directly."  
25 You see that?

1           A           I see that.

2           Q           If you turn to page 6 of  
3 this report or this paper, in the  
4 second-full paragraph right above the  
5 heading Academic Literature --

6           A           Sorry. There is a section  
7 that follows the FDT test and its  
8 successors that challenges to the FDT  
9 test. And it talks about opinions on  
10 both sides.

11          Q           Correct.

12                      It discusses the opinions on  
13 the other side?

14          A           Well, it discusses two  
15 opinions on the other side. I don't know  
16 if there are only two opinions on the  
17 other side.

18          Q           If you go to page 6 of this  
19 paper right above academic literature, do  
20 you see, it says, "There is no  
21 theoretical or mathematical/statistical  
22 reason to believe that the fraction of  
23 news days associated with statistically  
24 significant returns should exceed  
25 50 percent as a general matter in an

1 efficient market"? Do you see that right  
2 above the heading Academic Literature?  
3 It's the last sentence. Do you see that?

4 A Yes.

5 Q Do you disagree with that  
6 statement?

7 A No. This is just the same,  
8 as I told you earlier, that, you know,  
9 each -- for each company and time period,  
10 you have to -- you could calculate the  
11 threshold. And it may be higher than 50,  
12 it may be below 50.

13 Q And if you turn to page 9,  
14 in the second-full paragraph, he's  
15 discussing the results of his analysis  
16 which looked at all of the companies in  
17 the S&P 500. And he looked at both the  
18 day of an earnings release and the  
19 following day of an earnings release.

20 And he finds that "Thus, the  
21 argument that even a majority of news  
22 announcements should be associated with  
23 statistically significant returns would  
24 not hold for approximately half of the  
25 members of the S&P 500 under this set of

1 parameters." Do you see that?

2 A I see that. I just want to  
3 make sure what the set of parameters are.

4 Q Sure.

5 A If he's looking at a two-day  
6 window, then I would expect that he  
7 probably finds a lower set that are  
8 statistically significant.

9 Q If it's on page 7, it's the  
10 runover sentence. And he's -- not both.  
11 He's saying either the day of the  
12 earnings announcement or the following  
13 trading day or both.

14 A Okay.

15 Q Do you disagree with that  
16 statement?

17 MR. BALLARD: Which  
18 statement?

19 MS. POSNER: That the  
20 argument that even a majority of news  
21 announcements should be associated  
22 with statistically significant  
23 returns would not hold for  
24 approximately half of the members of  
25 the S&P 500 under this set of

1 parameters.

2 A Well, under the set of  
3 parameters, he's making a statement about  
4 a study he has conducted. And I'm  
5 assuming that the numbers there line up  
6 with what he's reporting in Table 1. So  
7 I have no reason to disagree.

8 Q If an earnings release was  
9 generally within market and analyst  
10 expectations, would you expect to see a  
11 statistically significant price reaction  
12 to an earnings release?

13 A No.

14 Q And if an earnings release  
15 provided few surprises, would you expect  
16 to see a statistically significant price  
17 reaction to the earnings release?

18 A So earnings releases contain  
19 information about past performance and  
20 often speak about the future. Analysts  
21 and market participants have expectations  
22 about both.

23 And I think your question  
24 was limited to past performance. But I  
25 may have misheard it. So it would be

1 both past performance and future. So the  
2 totality of the information was  
3 completely in line with what investors  
4 expected. There wouldn't be a reaction.

5 Q And if an earnings release  
6 contained both positive and negative  
7 information for the company, would you  
8 expect to see a statistically significant  
9 price reaction to the earnings release?

10 A So, again, I think -- just  
11 to be careful, statically significant  
12 relative to what threshold, but, no. If  
13 there were precisely offsetting, no. If  
14 it contained a lot of positive  
15 information and a little negative or vice  
16 versa, you would end up with a large  
17 return.

18 Q If material new information  
19 was provided in an earnings release,  
20 would you expect to see analyst reports  
21 or press reports discussing the  
22 information shortly thereafter?

23 A Typically, yes.

24 Q If analysts don't change  
25 their buy, sell or hold recommendation



1 based on an earnings release, would you  
2 expect to see a statistically significant  
3 price reaction to the earnings release?

4 A I have no beliefs on that.  
5 I mean I think that's a question that  
6 could be researched generally  
7 market-wide. And one would have to base  
8 opinions on that. I'd be making a guess.  
9 Your guess would be as good as mine.

10 Q Generally speaking, can you  
11 explain what preferred stock is?

12 A Preferred stock is a  
13 security that's a part of the capital  
14 structure of firms. It's junior to the  
15 debt, typically, and senior to the  
16 common.

17 So preferred stockholders  
18 get paid after debt holders have been  
19 paid but before common stockholders are  
20 paid. They typically have a stated  
21 dividend. But the dividend can be -- the  
22 company can miss a dividend payment  
23 without triggering default.

24 Q Preferred stock is typically  
25 a hybrid between equity and debt;

1 correct?

2 A Yes.

3 Q And would you agree with me  
4 that preferred securities are generally  
5 considered safer investments than common  
6 stock?

7 A Generally, yes.

8 Q If a company has both common  
9 stock and preferred stock, do you expect  
10 the common stock and the preferred stock  
11 to react in the same way to the same  
12 information?

13 A In the same way as in the  
14 same magnitude and direction, no.

15 Q Do you expect common stock  
16 and preferred stock -- strike that.

17 Do you expect preferred  
18 stock always to move in a statistically  
19 significant way if the common stock moves  
20 in a statistically significant way?

21 A The threshold for  
22 statistically significance would be quite  
23 different for the common and the  
24 preferred because the common stock is  
25 going to be much more volatile on a

1 day-to-day basis than the preferred.

2 So I don't know that I would  
3 be able to make a statement about whether  
4 they -- whether each time you saw a  
5 statistically significant return for the  
6 common, you'd see one for the preferred  
7 and vice versa.

8 Q Meaning that sometimes, they  
9 might both move statistically  
10 significantly and sometimes they might  
11 not; is that correct?

12 A And sometimes they might  
13 move in the same direction. And  
14 sometimes they might not.

15 Q Correct.

16 Would you expect a preferred  
17 security to be sensitive to the same  
18 information as a company's common stock?

19 A The same information would  
20 be relevant, or similar information would  
21 be relevant to both. But the common  
22 stockholders might care about some  
23 information more than the preferreds.  
24 Some information that's positive for the  
25 common could be negative for the

1 preferred and vice versa. So information  
2 about the company would generally be  
3 relevant to both common stockholders and  
4 preferred stockholders.

5 Q Information pertaining to  
6 revenue, earnings, profitability and  
7 share price are very important to common  
8 investors; correct?

9 A Yes. They are important to  
10 common.

11 Q And while they're important  
12 to preferred investors, they're not as  
13 important; correct?

14 A I don't know that that's  
15 necessarily the case. It is going to be  
16 important to preferred shareholders also.

17 Q To the same degree?

18 A Not to the same degree. And  
19 like I said, I mean some information  
20 about these items may be positive for  
21 common stockholders and negative for  
22 preferred stockholders.

23 Q Would you agree with me that  
24 information relevant to the debt  
25 component of a preferred stock is the

1 most important information for preferred  
2 stock investors?

3 A It is important information  
4 for preferred stockholders. I don't know  
5 if it's necessarily the most important.

6 Q Can you think of any kind of  
7 factor that would be more important for a  
8 preferred shareholder than information  
9 pertaining to the debt component?

10 A One of the two preferreds  
11 here was convertible. So, for example,  
12 that one would have, you know, some of  
13 the information that was relevant to  
14 the -- the common would be relevant to  
15 those investors also would be quite  
16 relevant; you know, trying to rank all  
17 the information is the bit that I'm just  
18 a little hesitant about.

19 Q So you don't have an opinion  
20 whether one is more important than the  
21 other?

22 A I think I don't have an  
23 opinion that -- a blanket statement that  
24 I can make that over the life of the  
25 company, it's always going to be this,

1       that's the most important.

2               Q           On pages 42 and 43, I think  
3       this is primarily paragraphs 133 and 134  
4       and 135, you conduct what you call  
5       "extended event study of Miller Energy's  
6       Series C and Series D preferred stock,  
7       using the returns that Mr. Coffman  
8       provided"; correct?

9               A           Yes. I summarized the  
10      results of his event study.

11              Q           The results that you  
12      conducted are in Table 6 and 7 of your  
13      report; is that correct?

14              A           Yes, that is correct.

15              Q           And based on that analysis,  
16      your conclusion is neither the Series C,  
17      nor the Series D reacted in a  
18      statistically significant way at the  
19      95 percent level to earnings releases;  
20      correct?

21              A           Correct.

22              Q           In your opinion, if the  
23      market for the Series C and Series D were  
24      efficient, would you have expected to see  
25      the Series C and Series D react in a

1 statistically significant way to earnings  
2 releases throughout the class period?

3 A Can you read that back,  
4 please?

5 (The requested portion was  
6 read back by the court reporter.)

7 A Yes. I mean, the thresholds  
8 prior to October 15th, 2014 are quite  
9 low. I think for the C, Mr. Coffman's  
10 threshold is 1 percent. And for the D,  
11 it's even less than 1 percent in terms of  
12 standard deviation.

13 So, you know, the thresholds  
14 for statistically significance are very  
15 low. And I would have expected that  
16 these investors would react to  
17 information on the financial condition of  
18 Miller.

19 Q Why would that be the case  
20 since you also offer the opinion that  
21 that methodology that Mr. Coffman uses of  
22 comparing earnings releases to non-news  
23 days is not sound?

24 A Sorry. Maybe I'm not  
25 understanding the question. This is just

1 whether or not, there would be a  
2 statistically significant reaction on  
3 earnings days?

4 Q Right.

5 And you previously and other  
6 parts of your report offer that the  
7 opinion that comparing earnings releases  
8 to non-news days is not a sound  
9 methodology for determining market  
10 efficiency, don't you?

11 A With a 5 percent threshold,  
12 yes, it's not. But with an appropriate  
13 threshold as we spoke of earlier, it  
14 could be an approach. And it's an  
15 approach that the courts seem to be  
16 using.

17 Q Can you explain what you  
18 mean when you say "with a 5 percent  
19 threshold, yes, it's not"?

20 A So the courts have decided  
21 to use the cause-and-effect analysis as  
22 one of the inputs to a determination of  
23 market efficiency.

24 And the point I made in a  
25 different part of this report is that one



1 cannot get to a finding that --  
2 economically, one cannot get to a finding  
3 that the security reacted to information  
4 by comparing the returns on earnings  
5 announcement days to returns on no news  
6 days without making an adjustment to the  
7 threshold.

8 Now, if you did make an  
9 adjustment to the threshold, you would  
10 have a way of determining whether or not  
11 the security was reacting or not reacting  
12 to information. And that seems to be one  
13 of the factors that the courts look at in  
14 determining efficiency.

15 Q In conducting the analysis  
16 in Table 6 and 7 of your report, did you  
17 make that adjustment to the threshold?

18 A The threshold adjustment is  
19 an adjustment that you'd make at the next  
20 step. So I think in Mr. Coffman's  
21 report, he has Exhibit 7, 9 and 11 that  
22 correspond to the information that's in  
23 my Exhibit 6 and 7. And then he has a  
24 second set of exhibits, 8, 10 and 12,  
25 which is where the threshold adjustment

1 would be needed.

2 And I don't even need to get  
3 to that point of making an adjustment to  
4 the threshold because I find that his  
5 analysis suggests that Miller's  
6 securities never reacted to the earnings  
7 announcements.

8 Q Did you make a threshold  
9 adjustment to Mr. Coffman's analysis with  
10 regard to the common stock?

11 A No. I haven't done that  
12 work.

13 Q Do you know what the results  
14 would be if you did make that threshold  
15 adjustment?

16 A I haven't done that work.  
17 So I don't know the answer.

18 Q If you expect the preferred  
19 stock to move in response to earnings  
20 releases like you just testified, why  
21 would analyst reports discussing the  
22 earnings releases not be relevant to the  
23 preferred shares?

24 A The earnings -- sorry. The  
25 analyst reports contain information

1 that's relevant to the preferred shares.  
 2 The analyst reports, however, do not  
 3 analyze the preferred shares. They do  
 4 not provide a valuation opinion on the  
 5 preferred shares. They do not provide,  
 6 you know, advice to investors on whether  
 7 they should buy, sell or hold the  
 8 preferred shares.

9 So to that extent, the  
 10 analyst reports do not -- you know, are  
 11 not relevant to the preferred shares.

12 Q Yet, the information that  
 13 they're purportedly analyzing is expected  
 14 to move the preferred shares in a  
 15 statistically significant way?

16 A The earnings -- the  
 17 information in the earnings is expected  
 18 to move the preferred in a statistically  
 19 significant way.

20 Q Even though it's your  
 21 opinion that the analyst reports  
 22 discussing that information are not  
 23 relevant to market efficiency for the  
 24 preferreds?

25 A The analyst reports

1 typically come out after the earnings  
2 announcements. So by then, the  
3 information in the earnings would already  
4 be impounded in the securities prices if  
5 they were efficient.

6 And what the analysts  
7 provide is, you know, the icing on the  
8 cake, the additional information on their  
9 take and their opinions about the  
10 information that came out. And there,  
11 they don't do the analysis for the  
12 preferreds. So they add little value to  
13 the preferred.

14 Q The information in the  
15 earnings would already be impounded in  
16 the securities prices for the common  
17 stock if it was efficient as well;  
18 correct?

19 A Yes.

20 Q Are you aware that for debt  
21 securities, courts analyze the Cammer  
22 factors and event studies differently  
23 than they do with regard to equity  
24 securities?

25 A I am not aware of

1 differences.

2 Q Let's turn to page 50 of  
3 your report. And I'm going to direct  
4 your attention to pages 50 to 52,  
5 paragraphs 151 to 154.

6 And you're discussing here  
7 the price reaction on July 31st, 2015.  
8 Are you there?

9 A Yes.

10 Q In your report, you state  
11 that Miller's delisting was expected  
12 prior to July 30th, 2015; correct?

13 A Correct.

14 Q You opine that Miller Energy  
15 investors did not invest any unexpected  
16 news information when the New York Stock  
17 Exchange actually delisted Miller Energy  
18 on July 30th, 2015; correct?

19 A Unexpected new information,  
20 no news information, yes.

21 Q Did you review the analyst  
22 reports discussing Miller Energy's  
23 potential delisting prior to July 30th,  
24 2015?

25 A I reviewed the analyst

1 reports. Sitting here, I don't have a  
2 recollection of each and every one of  
3 them.

4 Q I'm going to direct your  
5 attention back to what we previously  
6 marked as Exhibit 69.

7 And this is the May 1st,  
8 2015 MLV equity research report. And  
9 this is prior to the actual delisting on  
10 July 31st, 2015; correct?

11 A Correct.

12 Q And if you go down to the  
13 third heading, Assessment of SEC Wells  
14 and NYSE Continued Listing Notices, Point  
15 2 there, it states, "We expect the  
16 company to return to compliance with the  
17 continuing listing notice within its  
18 six-month window." Do you see that?

19 A Yes. This is to a different  
20 notice and the reason they were  
21 ultimately delisted.

22 Q When they say that they  
23 expect to return to compliance here, you  
24 think this is a different issue?

25 A My recollection is that it's

1 a different issue.

2 (The above-referred-to  
3 document was marked as Exhibit 78 for  
4 identification, as of this date.)

5 Q This is an analyst report  
6 from Imperial Capital on July 21st, 2015.  
7 Do you see that?

8 A Yes.

9 Q If you turn to the second  
10 page of the document, it's the carryover  
11 on rationale, you see the last sentence  
12 there, it notes that Miller is within an  
13 18-month cure program that commenced in  
14 May 2015? Do you see that?

15 A Yes.

16 Q Do you think they're talking  
17 about a different delisting issue there  
18 as well?

19 A Yes. I think if you look at  
20 Footnote 170 -- actually, 168 or 169 --  
21 169, there were a number of different  
22 delisting notices that the company  
23 received.

24 Q Right.

25 In paragraph 152 where

1 you're referencing that, that's the basis  
2 for your opinion that the market was  
3 expecting the delisting; correct?

4 A Well, yes. Footnote 170 is  
5 the one that's right on point where the  
6 company on July 29th -- that, you know,  
7 they were below 15 million. And they  
8 referred to it as being a bright line  
9 which, you know, I'm assuming is a legal  
10 term, a bright line threshold -- give me  
11 a second -- and they said they were  
12 expecting it as early as this week.

13 (The above-referred-to  
14 document was marked as Exhibit 79 for  
15 identification, as of this date.)

16 Q I'm marking as Exhibit 79 --  
17 this is an earnings call transcript from  
18 July 29th, 2015; correct?

19 A Correct.

20 Q If you turn to page 145 of  
21 this report, that first-full paragraph --

22 A Yes.

23 Q -- it talks about "The fact  
24 that they believe there are many factors  
25 that should be discussed and considered



1 by the New York Stock Exchange before any  
2 action is taken to delist our stock,  
3 including the advanced status of our  
4 capital repositioning and our plans to  
5 maximize the value of and the growth in  
6 our assets. In the event in our PO we  
7 are ultimately unsuccessful, we expect  
8 our securities will begin trading  
9 over-the-counter." Do you see that?

10 A Yes.

11 Q So they were telling the  
12 market that they were appealing this  
13 potential delisting; correct?

14 A I think they were saying  
15 that they plan to appeal it. Let me just  
16 read this. Yes. They said we expect we  
17 will avail ourselves of the right to appeal  
18 any delisting proceeding, yes, that's  
19 about what they said.

20 Q And they're saying that they  
21 think they're going to be successful in  
22 their appeal; correct?

23 A That's what they said, yes.

24 Q So you think investors were  
25 aware of this earnings call on July 29th,

1 2015?

2 A Investors were aware that  
3 their market cap had fallen below  
4 15 million, that they would have been  
5 aware of, even absent this earnings call.  
6 If they haven't been made aware, they had  
7 now been made aware. They described it  
8 as a bright line rule, whatever that  
9 means legally.

10 And if investors were aware  
11 of the New York Stock Exchange's  
12 procedures, when you hit 15 million, it  
13 was that they would suspend trading as  
14 they began delisting proceedings. So it  
15 was not that they began proceedings and  
16 then kind of let them play out and  
17 suspend trading or delist at the end.  
18 It's they would suspend at the time they  
19 gave notice. So I mean that's something  
20 investors would have been aware of  
21 because they kind of are investors.

22 Q In this same earnings call,  
23 the company discusses all of the things  
24 they're doing to shore up their balance  
25 sheet; correct?

1           A           If you can point me to that.

2           Q           Sure.

3                   It's throughout. But I'll  
4 point you to paragraph 4 on page 9.

5           A           Paragraph 4, page 9.

6           Q           Yes. The little number.  
7 It's kind of the faded number on the  
8 right.

9           A           I don't see anything.

10          Q           So it's talking about  
11 they're prioritizing, securing,  
12 refinancing and restructuring their debt.

13                   And then if you go down a  
14 few more paragraphs to the second from  
15 the bottom, they talk about being --

16          A           Hang on. So securing,  
17 refinancing while we restructure our  
18 existing debt through bankruptcy?

19          Q           Yes.

20          A           So from an equity  
21 perspective, it would get all wiped out.

22          Q           But they're talking about  
23 trying to avoid that; correct?

24          A           Sorry. Where are they  
25 talking about avoiding that?

1           Q           They're saying that they're  
2 prioritizing, securing, refinancing while  
3 at the same time, they're restructuring  
4 their existing debt; right?

5           MR. BALLARD: Objection.

6           A           Through bankruptcy.

7           Q           Correct.

8                       They're giving two things  
9 that they're working on simultaneously;  
10 correct?

11          MR. BALLARD: Objection.

12          A           I think they're talking --  
13 and maybe I'm just reading this  
14 differently. I thought it's that they  
15 are trying to secure refinancing to exit  
16 bankruptcy. So you have a bunch of debt.  
17 You need to restructure it. You also  
18 need more money to be able to exit. And  
19 I'm not sure how any of this helps push  
20 the equity value up over 15 million.

21          Q           So you read those to be  
22 coextensive, not separate items?

23          A           Well, even if they are  
24 separate -- I read them to be coextensive  
25 as you said. But even if they are

1       separate, I don't know how it helps push  
2       the equity value up.

3           Q           If you go further down this  
4       page, the second-to-last paragraph, they  
5       talk about also being discussions with  
6       private infrastructure fund to make a  
7       minority investment in our substantial  
8       midstream assets.

9           A           Yes.

10          Q           You see that?

11          A           Again, I'm not sure how that  
12       increases equity value.

13          Q           So you don't think an  
14       investment in their assets would increase  
15       equity?

16          A           I don't see how -- typically  
17       when a firm is at that point,  
18       investment -- investors who come in take  
19       away from equity value because they're  
20       taking secured positions and assets.

21          Q           If you go back to page 8,  
22       the seventh-full paragraph down, so where  
23       "We as a company" paragraph.

24          A           Yes.

25          Q           You read that sentence.

1                   And it talks about the fact  
2                   that "We believe our immediate financial  
3                   problem will be solved in time and again  
4                   without bankruptcy." Do you see that?

5                   A            Yes.

6                   Q            Does that help clarify for  
7                   you that they weren't intending to file  
8                   for bankruptcy at this time and that they  
9                   thought they had sufficient financial  
10                  position to cover their obligations?

11                  A            Yes. But I don't see how  
12                  that would help push the value of the  
13                  common above 15 million which is what  
14                  you'd need to avoid getting delisted.

15                  Q            Well, they're talking about  
16                  being able to obtain near-term cash state  
17                  tax credit receipts, as well as money in  
18                  litigation judgments and money in ARO.  
19                  You see that?

20                  A            Right. But the expected  
21                  value of all of this would already be  
22                  reflected in the common stock. And with  
23                  all of these things, the common stock was  
24                  worth less than 15 million.

25                  Q            No.

1                   This is saying expected, not  
2                   what they have currently; correct?

3           A           Yes.   So that's what I'm  
4           saying.   So if I expect to be able to get  
5           100 million but with 5 percent  
6           probability, then investors have already  
7           impounded the expected value of  
8           \$5 million.   So the 100 million times the  
9           5 percent into the value of the fund.

10          Q           If you turn to page 12, Neal  
11          Dingmann from SunTrust asks about the  
12          timing of some of the financing they're  
13          expecting to get.

14                   And Miller's CEO responds  
15                   "very quickly."

16                   And then further down the  
17          page in the statement right before the  
18          end, he talks about the fact that he's  
19          disappointed that they didn't have  
20          another 24 million that they were hoping  
21          to get with the 9.3 million that we've  
22          got today and that he's surprise -- he  
23          would be surprised if they didn't get it  
24          actually just later today after the call;  
25          correct?

1           A           Yes. He's saying that.

2           Q           And he says, "At a minimum,  
3 they think they'll have it by the end of  
4 August"; correct?

5           A           Yes. But if you recall,  
6 they said they expected the delisting  
7 notice this week which is way before the  
8 end of August.

9           Q           But that would give  
10 investors some assurance that if they got  
11 it, for example, later that day, that the  
12 delisting wouldn't be an issue; correct?

13          A           If they got it later that  
14 day, yeah. So then the cause of the  
15 decline would not be the delisting but  
16 would actually be the fact that the money  
17 didn't come in.

18          Q           Are you asking me a  
19 question?

20          A           No. I'm just trying to  
21 understand where you're going with these  
22 questions. Sorry.

23          Q           Let's turn to page 11 of  
24 your report, pages 11 through 13. And  
25 you're talking here about the index that



1 Mr. Coffman used in his event study. Are  
2 you there?

3 A Yes.

4 Q You criticize Mr. Coffman  
5 for either mislabeling the index he used  
6 or using the wrong oil price index;  
7 correct?

8 A I note that he has  
9 mislabeled the index or used one that is  
10 different than the one he says he used.

11 Q Did you check to see whether  
12 the outcome of Mr. Coffman's test for  
13 cause and effect would change if he were  
14 to use one of the oil price indexes  
15 versus the other?

16 A No. I did not do that.

17 Q Do you agree that both the  
18 NYMEX WTI Light Sweet Crude Oil Future  
19 Index and the ICTEI Light Sweet Crude Oil  
20 Futures Index tracked the same underlying  
21 commodity?

22 A They track -- yes.

23 Q Let's turn to page 9 of your  
24 report. It's 9 through 11, paragraphs 30  
25 through 33. And you criticize

1 Mr. Coffman for not counting for the  
2 payment of dividends and computing his  
3 returns for the Series C and Series D  
4 stock; correct?

5 A I note that he did not.

6 Q Did you check to see whether  
7 the outcome of Mr. Coffman's test for  
8 cause and effect for either of the Series  
9 C or the Series D would change if one  
10 were to account for the payment of  
11 dividends in computing the returns?

12 A I did not do the work. I  
13 have, though, pointed out that the  
14 numbers in his various exhibits would be  
15 affected and, you know, numbers that he  
16 bases his statistical tests on would  
17 be -- would change.

18 So both of these -- you  
19 know, the preferred stock, dividend issue  
20 and the use of an index different than  
21 the stated one would affect all of the  
22 numbers in his report and in those  
23 various exhibits to the report.

24 Q Let's turn to page 72 of  
25 your report. And this is pages 72

1 through 76, paragraphs 214 to 219.

2 Is it your opinion that two  
3 days statistically significant price  
4 movements following material new news is  
5 inconsistent with market efficiency?

6 A Sorry. Can you restate that  
7 question, please?

8 (The requested portion was  
9 read back by the court reporter.)

10 A Sorry. Two --

11 Q I'll read it back.

12 Is it your opinion that  
13 two-day statistically significant price  
14 movements following material new news is  
15 inconsistent with market efficiency?

16 A So just so I respond to the  
17 right question, are you saying that  
18 there's material new information on,  
19 let's say, at 8 a.m. on a day and you see  
20 a statistically significant return on Day  
21 1 and then a statistically significant  
22 return on Day 2 and would I say that's  
23 indicative of market inefficiency?

24 Q Correct.

25 A No, because, you know, the

1 second day could just be by random  
2 chance.

3 Q It also could be in response  
4 to the new information; correct?

5 A It depends on the type of  
6 information or if there are -- there is  
7 some follow-on kind of information that  
8 came out. Possibly.

9 Q So it's possible that you  
10 could see multiple days of statistically  
11 significant returns in response to new  
12 material information in an efficient  
13 market?

14 A Well, it depends on the type  
15 of information. So, you know, sometimes,  
16 information is complex. And it takes  
17 investors a while to -- to evaluate it  
18 and to get their heads around it and  
19 determine the value implications of it.  
20 So that would not imply market  
21 inefficiency in and of itself.

22 Q Let's turn to this  
23 August 29th, 2011 Form 10-K A filing.

24 I think you agree with me  
25 that on August 29th, 2011, Miller Energy

1 filed the Form 10-K A; correct?

2 A Miller Energy filed a Form  
3 10-K A on August 29, 2011.

4 Q And do you agree with me  
5 that it's also the first time that KPMG  
6 issued an audit report on Miller Energy's  
7 financial statements?

8 A It is the first time that  
9 KPMG issued -- well, it's the first time  
10 there was a 10-K filed with KPMG audit  
11 opinion. And it was not withdrawn.

12 Q Fair enough.

13 And there was no other kind  
14 of SEC filing in which KPMG issued an  
15 audit opinion on Miller Energy's  
16 financial statements prior to  
17 August 29th, 2011; correct?

18 A That's my understanding.

19 Q And I think you also agree  
20 with me that on August 29th, 2011, the  
21 price of Miller Energy's common stock  
22 increased from \$2.27 to \$3.65 or  
23 60.8 percent; correct?

24 A Miller Energy's stock price  
25 increased, yes.

1           Q           And that increase was  
2 statistically significant; correct?

3           A           Mr. Coffman finds that to be  
4 statistically significant.

5           Q           Do you disagree that it was  
6 statistically significant?

7           A           I have not done the work.

8           Q           But despite those facts,  
9 it's your opinion that KPMG's audit  
10 opinion on that date did not cause the  
11 price of Miller Energy's common stock to  
12 increase; correct?

13          A           It's my opinion that  
14 Mr. Coffman hasn't shown that it was  
15 KPMG's audit opinion as opposed to other  
16 information that came out in the 10-K  
17 that caused the price increase.

18          Q           Do you have an opinion about  
19 what caused the price increase on  
20 August 29th, 2011?

21          A           No, I do not.

22          Q           Turning to your  
23 paragraph 218, you talk about other  
24 information that was disclosed on that  
25 date that might account for the price

1     increase; correct?

2             A             Correct.

3             Q             And the first thing you note  
4     is that the valuation of the Alaskan  
5     assets have been previously disclosed on  
6     July 29th and August 8th, 2011; correct?

7             A             Yes. That's the first thing  
8     I note.

9             Q             So that information wouldn't  
10    have been responsible for the price  
11    increase on August 29th, 2011; correct?

12            A            That information wouldn't be  
13    expected to be the reason for the price  
14    increase.

15            Q            And then the second thing  
16    you talk about here is the fact that the  
17    disclosure was confounded by the  
18    disclosure of the loan amendment and  
19    waiver. Do you see that?

20            A            Yes.

21                         (The above-referred-to  
22    document was marked as Exhibit 80 for  
23    identification, as of this date.)

24            Q            I've handed you what's been  
25    marked as Exhibit 80 which is an

1 August 30th, 2011 SunTrust Robinson  
2 report.

3 A Yes.

4 Q If you look in that first  
5 paragraph, it talks about these credit  
6 amendments that you were just discussing  
7 in your report.

8 A Yes.

9 Q And then it says, "We've  
10 lowered our price target to \$8 from \$8.50  
11 as we factor in a higher cost of new  
12 funding. We now assume both rigs started  
13 drilling early November." Do you see  
14 that?

15 A Yes.

16 Q So, if anything, the  
17 amendments to their credit agreements  
18 would have caused Miller Energy's stock  
19 price to go down, not to go up; correct?

20 A Well, there are two things  
21 they're talking about here. The higher  
22 cost of new funding and the rigs starting  
23 in early November. So it could be one or  
24 the other. But, yes, it's a higher cost  
25 of new funding.



1           Q           That's a negative thing for  
2 Miller Energy; correct?

3           A           A higher cost is typically a  
4 negative thing, yes.

5           Q           So we wouldn't expect that  
6 to cause Miller Energy's stock price to  
7 go up; correct?

8           A           Well, this is one analyst's  
9 opinion. It would be helpful to look at  
10 the full spectrum of analyst reports  
11 around this event to determine what other  
12 people were thinking.

13          Q           Do you think ever increasing  
14 the cost of new funding would cause  
15 someone's stock price to go up, a  
16 company's stock price to go up?

17          A           Well, if the new -- if an  
18 increased cost goes along with greater  
19 flexibility or increased funding then,  
20 yeah, the cost could be outweighed by the  
21 benefits.

22          Q           Do you know what the  
23 amendment here that they're discussing on  
24 August 29th did?

25          A           I don't know precisely,

1 sitting here.

2 Q Let's go back to your  
3 report.

4 A But again, it would be  
5 important to look at, you know, the  
6 opinions of multiple analysts.

7 Q Let's stay on this analyst  
8 report.

9 In the second bullet point,  
10 they talk about the fact that the "Fully  
11 audited 10-K provides few surprises and  
12 reassures asset value."

13 And then, it says, "KPMG  
14 states in the audited filing that the  
15 results of Miller's operations and cash  
16 flows for the fiscal year ended 2011 were  
17 in conformity with U.S. GAAP."

18 And then it talks about some  
19 minor amendments. Do you see that?

20 A Yes.

21 Q In that paragraph or  
22 anywhere in the report, it doesn't  
23 mention the results of the investigation  
24 that was into whether what happened --  
25 strike that.

1                   Nothing in this report  
2       discusses the results of the  
3       investigation as to how Miller Energy  
4       came to file its earlier 10-K without  
5       sign-off from KPMG; correct?

6           A           Yeah. I mean one would have  
7       to look at earlier reports from this  
8       analyst to determine how much -- how  
9       concerned they were about that issue.

10          Q           And the focus of that  
11       investigation was really whether and how  
12       the company came to file a 10-K without  
13       auditor sign-off; correct?

14          A           That's my understanding,  
15       correct.

16          Q           Let's go back to your  
17       paragraph 218. The third reason you  
18       state, that this increase might not be in  
19       response to KPMG's audit report, is the  
20       fact that they reported that there was no  
21       intentional wrongdoing in the disclosure  
22       errors, limiting potential legal goal  
23       liabilities. Do you see that?

24          A           Yes.

25          Q           Do you think that

1 information would also be relevant to the  
2 importance of KPMG's signing off on  
3 Miller Energy's statements in the  
4 August 29th, 2011 10-K A?

5 A Sorry. Which information?

6 Q That there was no finding of  
7 intentional wrongdoing.

8 A The fact that there was no  
9 finding of intentional wrongdoing would  
10 be relevant to KPMG?

11 Q Would be related to the fact  
12 that KPMG signed off on Miller Energy's  
13 financial results in the August 29th,  
14 2011 10-K A.

15 MR. BALLARD: Objection to  
16 form.

17 A I'm not sure I understand.

18 Q Do you think there's a  
19 relationship between the fact that there  
20 was a finding of no wrongdoing and the  
21 fact that KPMG signed off on Miller's  
22 financial results in the August 29th,  
23 2011 10-K A?

24 MR. BALLARD: Objection.

25 A I don't know that there

1 would be a relationship between the  
2 finding. My assumption is that there  
3 would be a relationship between whether  
4 it was an honest mistake or someone  
5 trying to manipulate markets or put  
6 information out. That -- there, the  
7 relationship would be there.

8 If it was an honest mistake,  
9 more likely than not, there was some kind  
10 of a timing issue, someone misunderstood  
11 whether the audit opinion had been  
12 provided or not, while if there was ill  
13 intent, then it's more likely than not  
14 that KPMG wouldn't have ultimately signed  
15 off an audit opinion or would have taken  
16 a lot longer to sign off on an audit  
17 opinion.

18 Q And I apologize if I already  
19 asked that.

20 But have you analyzed  
21 whether the audit opinion on August 29th,  
22 2011 impacted Miller Energy's stock  
23 price?

24 A I did not. I looked at what  
25 Mr. Coffman said about the -- about the

1 price on August 29th. And I looked at a  
2 longer window to see how the price  
3 reacted over that longer window.

4 And I note in my report that  
5 from July 29th, the day before the  
6 erroneous filing to August 29th, the day  
7 after the 10-K A filing, the stock price  
8 was down, both in terms of the stock  
9 price itself and if you use Mr. Coffman's  
10 adjusted returns on that basis too.

11 Q Do you think it's likely  
12 that KPMG's audit opinion on August 29th,  
13 2011 did not cause at least part of the  
14 stock price increase that day?

15 A I don't have an opinion on  
16 that.

17 Q Have you analyzed whether  
18 the alleged corrective disclosures in  
19 this case impacted Miller Energy's stock  
20 price?

21 A In what sense? Just in  
22 terms of the returns on those days, the  
23 statistical significance?

24 Q Either.

25 A I know that Mr. Coffman's

1 backup material has the normal returns.

2 I haven't looked at them carefully.

3 Q Do you have an opinion about  
4 whether the corrective disclosures caused  
5 a statistically significant price decline  
6 in Miller Energy's stock?

7 A Individually? Each of the  
8 whatever 17?

9 Q I'm just asking whether you  
10 have an opinion, period.

11 A I know that some of them  
12 didn't because I believe that some of the  
13 earnings announcements are corrective  
14 disclosures. And Mr. Coffman finds they  
15 did not. But beyond that, I haven't  
16 looked.

17 THE VIDEOGRAPHER: We're  
18 going off the record at 12:02 p.m.  
19 This marks the end of Media 3.

20 (A short recess was taken.)

21 THE VIDEOGRAPHER: We are  
22 back on the record at 12:23 p.m.  
23 This marks the beginning of Media 4.

24 MS. POSNER: Dr. Attari,  
25 thank you very much. I have no

1 further questions, pending cross from  
2 your counsel.

3 EXAMINATION BY

4 MR. BALLARD:

5 Q Earlier today, you recall  
6 you were asked some questions about some  
7 analyst reports that you were shown?

8 A Yes.

9 Q And you were asked some  
10 questions in particular about information  
11 in there and whether it was relevant to  
12 preferred shareholders. Do you recall  
13 that testimony?

14 A Yes.

15 Q Can you explain why it is  
16 that you don't believe the discussions in  
17 those analyst reports constitute analyst  
18 reports for purposes of the Cammer factor  
19 for purposes of the preferred stock?

20 MS. POSNER: Objection.

21 A So the purpose of analyst  
22 reports is to collect information, to  
23 analyze information and to inform  
24 investors of the implications of the  
25 information for the value of the



1 securities that they hold.

2 If you look at the analyst  
3 reports that we were looking at earlier,  
4 they contain that type of analysis and  
5 opinions for the common stock. But they  
6 do not contain similar analyses or  
7 opinions for the preferred stock.

8 So, for example, the analyst  
9 reports do not say we think that the  
10 Series C preferred stock, we have a price  
11 target of, say, \$27 for the Series C  
12 preferred stock or we advise investors to  
13 sell the Series C preferred stock that  
14 they hold and so on.

15 So for this reason, those  
16 reports cannot be considered analyst  
17 reports for the preferred stock. What  
18 the analyst reports do contain is  
19 information on how much of the preferred  
20 securities is outstanding, what the  
21 dividend payments on those will be and  
22 such. But that's largely in the context  
23 of trying to value and analyze the common  
24 stock.

25 So the cash that's left over

1 for common stockholders is -- depends on  
2 the amount that's -- interest payments to  
3 debt holders, preferred dividends to the  
4 owners of preferred securities. So after  
5 all of those deductions. So a lot of the  
6 references to the preferred securities  
7 was in relation to that.

8 There were also references  
9 about -- to preferred securities in terms  
10 of, you know, the company at issue had  
11 preferred securities and had raised  
12 moneys from those preferred securities.  
13 But that's just reiterating information  
14 that's already out in the market.

15 Q I would like to also revisit  
16 a topic that came up more recently in  
17 your testimony today.

18 If you turn to pages 75 and  
19 76 of your report, you refer to a loan  
20 agreement and the waiver of certain  
21 events of defaults on these pages.

22 Do you recall you were asked  
23 some questions about that earlier today?

24 A Yes.

25 Q What was the significance of

1 the loan agreement revisions and the  
2 waiver of events of defaults to investors  
3 in Miller Energy securities?

4 A So the waiver of events of  
5 defaults basically means that the company  
6 can continue in operation which from a  
7 common stockholder's perspective is  
8 positive information because otherwise,  
9 the company is in default and, you know,  
10 will be liquidated or go through a  
11 bankruptcy proceeding, a reorganization  
12 and a bankruptcy proceeding which  
13 typically causes a loss in value for  
14 common stockholders. So it's positive  
15 news for common stockholders.

16 Q Does Exhibit 58, your expert  
17 report, still contain a complete and  
18 accurate statement of your opinions as  
19 you hold them right now?

20 A Yes.

21 Q Have you changed your  
22 opinions in any way over the course of  
23 the questions and answers today?

24 A No.

25 MR. BALLARD: I have no

1 further questions.

2 FURTHER EXAMINATION BY

3 MS. POSNER:

4 Q I believe you already  
5 testified to this earlier today.

6 But you have no academic  
7 research supporting your position that in  
8 order for an analyst report to be  
9 relevant for Cammer Factor 2, it must  
10 have a price target and a buy, hold or  
11 sell recommendation on it; correct?

12 A Yes, correct.

13 Q You'll also agree with me  
14 that the analyst reports that we looked  
15 at earlier today not only discuss the  
16 things you just responded to with  
17 Mr. Ballard but also discussed things  
18 such as the company's liquidity; correct?

19 A Yes.

20 Q They also discuss the  
21 company's debt; correct?

22 A Yes.

23 Q They also discuss the  
24 ability of the company to pay its  
25 dividends to preferred shareholders;

1 correct?

2 A Yes.

3 Q And then moving to the  
4 second topic Mr. Ballard asked you about  
5 with regard to the August 29th waiver, as  
6 of August 29th, 2011, was there a threat  
7 that the company could not continue in  
8 operations at that time, absent this  
9 waiver?

10 A I assume that there must  
11 have been an event of default because  
12 otherwise, you would not need a waiver of  
13 an event of default.

14 MS. POSNER: Can you read  
15 back the question?

16 (The requested portion was  
17 read back by the court reporter.)

18 A And if there was a default,  
19 then that would threaten the continued  
20 operations of the company.

21 Q Was there a concern that  
22 they would not get that waiver at that  
23 time?

24 A I have not studied the  
25 issue.

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MS. POSNER: I have no  
further questions.

THE VIDEOGRAPHER: This  
concludes today's testimony of  
Mukarram Attari. We're going off the  
record at 12:30 p.m. This also  
concludes Media 4.

(Time noted: 12:30 p.m.)

-----  
DR. MUKARRAM ATTARI

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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NOTARY PUBLIC

## I N D E X

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C E R T I F I C A T I O N

I, ANTHONY GIARRO, a Shorthand  
Reporter and a Notary Public, do hereby  
certify that the foregoing witness, DR.  
MUKARRAM ATTARI, was duly sworn on the date  
indicated, and that the foregoing, to the  
best of my ability, is a true and accurate  
transcription of my stenographic notes.

I further certify that I am not  
employed by nor related to any party to  
this action.



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ANTHONY GIARRO





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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and  
(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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